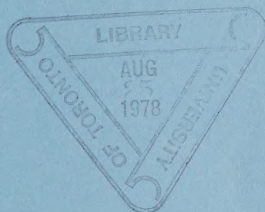


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Third Report

April 1977 - September 1977

Ombudsman/Ontario
Volume I



Third Report

April 1, 1977 – September 30, 1977

**Ombudsman/Ontario
Volume I**



The Ombudsman | Ontario

ARTHUR MALONEY, Q.C.

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February 20, 1978.

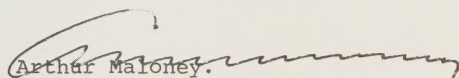
The Speaker,
Legislative Assembly,
Province of Ontario,
Queen's Park,
Toronto, Ontario.

Dear Mr. Speaker:

I have the honour to present the Third Report of the Ombudsman for the period April 1, 1977 to September 30, 1977. Summaries of this Report in the French language will be available in the near future.

This report is submitted pursuant to Section 12 of The Ombudsman Act, 1975.

Yours faithfully,


Arthur Maloney.



L'Ombudsman | Ontario

ARTHUR MALONEY, C.R.

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le 20 février 1978.

Monsieur le Président
Assemblée législative
Province de l'Ontario
Queen's Park
Toronto (Ontario)

Monsieur,

J'ai l'honneur de vous présenter le Troisième rapport de l'Ombudsman pour la période du 1er avril 1977 au 30 septembre 1977. Le résumé en français de ce rapport sera disponible prochainement.

Ce rapport est soumis conformément à l'article 12 de la Loi sur l'Ombudsman, 1975.

Veuillez agréer, Monsieur le Président, l'expression de mes sentiments les plus respectueux.


Arthur Maloney.



The Gryphon

Symbolic of the law, The Ombudsman's GRYPHON comes to us from ancient mythology, and is alluded to in the Scriptures.

The Biblical counterpart of the Gryphon — THE CHERUBIM — guarded the entrance to Eden.

In Hellenic mythology, the Gryphon was a sacred beast of the Goddess "Nemesis" as an offspring of a lion and an eagle and, with its resultant capacity for swiftness and strength, it sped forth to avenge arbitrary acts upon man.

With the Gryphon drawing the chariot of the Golden Sun God "Apollo", this came to represent justice and moderation.

All these qualities, as well as the modern symbolism which depicts the Gryphon as the Guardian of the Rights of Man, are embodied in the marque as chosen by the Ombudsman for the Province of Ontario.

It suspends over four representations of the floral emblem of Ontario. . . "The Trillium".

- ▽ One Trillium represents our Native people
- ▽ One Trillium represents our people of French origin
- ▽ One Trillium represents our people of Anglo-Saxon origin
- ▽ One Trillium represents our people of other Ethnic origins

and thus "THE OMBUDSMAN" represents protection for the Social Rights and Cultural Integrity of all.



Le Griffon

Symbole de la loi, le GRIFFON de L'Ombudsman nous parvient de l'ancienne mythologie; les Ecritures saintes y font également allusion.





Dans la Bible, l'équivalent du Griffon — LE CHERUBIN — gardait l'entrée au Paradis.

Le Griffon, dans la mythologie grecque, était le monstre sacré de la déesse Némésis. Créature fabuleuse dotée du corps du lion et de la tête et des ailes de l'aigle, elle possède donc la force de l'un et la vitesse de l'autre, et est prompte à venger l'homme victime d'une action arbitraire.

C'est ainsi que l'image du Griffon tirant le char du dieu du soleil flamboyant, Apollon, représente la justice et la modération.

Toutes ces qualités associées au symbolisme moderne, sont représentées par le Griffon, gardien des droits de l'homme, et l'emblème choisi par l'Ombudsman de l'Ontario.

Il domine quatre trilliums, emblème floral de l'Ontario.

-  Un trillium représente notre population autochtone
-  Un trillium représente notre population d'origine française
-  Un trillium représente notre population d'origine anglo-saxonne
-  Un trillium représente notre population d'autres ethnies

et, par conséquent, "L'OMBUDSMAN", protecteur du citoyen, défend les droits sociaux et l'intégrité culturelle de tous.

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CHAPTER ONE

INTRODUCTION

I am pleased to present the Third Report of the Ombudsman covering the period April 1 to September 30, 1977.

As I stated in the Second Report, the legislation which created this Office set out a minimum requirement that the Ombudsman report annually to the Legislature but I decided that because of the volume of cases dealt with by the Ombudsman, both the members of the public and the Legislature would be better served if I were to report to the Legislature on a semi-annual basis.

Thus, this Report, which covers a six-month period, marks what I hope will be a regular accounting of our activities on a twice-yearly basis. I am confident that this reporting schedule, which will allow members of the public and the Legislature to scrutinize our operations on the comparable basis of regular cut-off dates (March 31 and September 30), will enable those interested in the Office of the Ombudsman to gain a better understanding of our services to the public.

The Fourth Report of the Ombudsman will cover the period October 1, 1977 to March 31, 1978.

As in our previous Reports, we have provided detailed statistics concerning the number of complainants who approached our Office for assistance, as well as the number of individual complaints they presented to us. A complaint-by-complaint summary of all grievances dealt with and completed during the reporting period is contained in Volume II of this Report. As a result of a number of suggestions made to us following the release of our first two Reports, we decided to include these line summaries in a separate volume of this Report so as to reduce the size of the Report and thereby economize on our printing costs since only a limited number of copies of Volume II has been printed.

Volume I of this Report, as well as providing detailed statistics covering the period from April 1 to September 30, 1977, also summarizes 100 complaints in depth, including 5 cases in which the recommendation of the Ombudsman was rejected by the governmental organization involved. These unresolved complaints are being brought to the attention of the Legislature through this Report.

This Third Report of the Ombudsman also summarizes the highlights of the successful Canadian Conference of Legislative Ombudsmen - 1977, which took place in Toronto from September 12 to September 16. The report on the Conference is contained in Chapter II.

With regard to the Third Report of the Select Committee on the Ombudsman, issued on November 25, 1977, I have decided not to respond to its comments in this Report, but will do so during regular Committee meetings this year.

Correctional Report

My Report on the Province's Correctional Institutions was delivered to the Minister of Correctional Services, the Honourable Frank Drea, on December 20, 1977, and was released to the public by him on February 9, 1978.

This investigation, it will be recalled, began in November, 1975, when I had not only received more than 100 complaints from individual inmates in correctional institutions across the Province, but also had been made aware of a statement by a senior spokesman of the union representing Provincial correctional workers alleging that Ontario's correctional system was on the verge of inmate riots.

As a result of information gathered by my Investigators in November, 1975, I concluded that there was no danger of impending riots, but I decided to monitor the Province's correctional institutions through the numerous complaints sent to our Office by inmates. In order to deal with these complaints, Investigators from my Office visited almost every jail, detention centre and correctional facility in the Province and gained a special insight into problems facing the Ministry of Correctional Services, problems which were outlined in detail in my Report to the Minister. The Report also contains my recommendations to the Minister.

Copies of the Report are available at a nominal cost through the Information Branch of the Ministry of Correctional Services.

Budget

As I stated in my Second Report to the Legislature, the Office of the Ombudsman submitted its estimates for 1977-78 to the Board of Internal Economy on March 1, 1977. The estimates submitted amounted to \$3,909,000. On March 8, 1977, the Board of Internal Economy approved estimates of \$3,560,000. This amount was subdivided by Standard Account Classification as follows:

Salaries and Wages	\$2,342,000
Employee Benefits	248,000
Transportation and Communications	233,000
Services	600,000
Supplies and Equipment	137,000
	<hr/>
	\$3,560,000
	<hr/>

In November, 1977, I requested supplementary estimates in the amount of \$1,100,577 and pointed out to the Board of Internal Economy that the Office of the Ombudsman - largely as the result of events outside of its control - had been faced with additional and unforeseen expenses.

The North Pickering hearings, for example, caused our original estimates to be increased by \$250,000 for court reporting and legal costs associated with these hearings.

Another \$239,700 was requested for salaries and wages. Of that amount, \$55,000 represented proposed merit increases for staff members. These proposed increases were originally presented to the Board in March, 1977 but were deferred for a ruling by the Anti-Inflation Board. Subsequently, the Anti-Inflation Board confirmed that the proposed merit increases were within its guidelines. A further \$34,000 was required to adjust the salaries of certain staff members as a result of a Salary Administration Study undertaken by the management consulting firm of Hickling-Johnston. In addition, \$18,500 was requested for promotional increases due to certain internal organizational changes within the Office.

The balance of the requested funds were for employee benefits (\$37,577), transportation and communications (\$119,700), services (\$334,900) and supplies (\$118,700).

By letter dated November 29, 1977, the Board of Internal Economy informed me that it had approved supplementary estimates for the Office of the Ombudsman in the amount of \$633,500. This amount was subdivided as follows:

Salaries and Wages	\$163,500
Employee Benefits	24,500
Transportation and Communications	35,500
Services	353,000
Supplies and Equipment	57,000
	<hr/>
	\$633,500

As I indicated in the Ombudsman's Second Report to the Legislature, I feel that it is desirable that the Office of the Ombudsman should be subjected to objective scrutiny by a professional consultant group. I, therefore, requested, by way of supplementary estimates, an amount of \$75,000 for a management study. The amount of the request was based on a cost estimate submitted to the Office by the management consulting firm of Hickling-Johnston Limited which developed a salary administration program for the Office of the Ombudsman and thereby gained a great insight into our operation.

The Board of Internal Economy, in approving supplementary estimates in the amount of \$633,500, did so with the condition that \$25,000 of that amount be used for a management study. In approving the amount of \$25,000 for the study, the

Board resolved that:

"a Management Study of the Ombudsman's Office be undertaken in co-operation with the Board of Internal Economy; that a steering committee consisting of staff of the Ombudsman's Office and staff of the Board of Internal Economy be established to oversee the study; and that the cost for such a study not exceed \$25,000, the amount which has been included by the Board in the approved Supplementary Estimates."

The stipulation that a steering committee consisting of staff of the Ombudsman's Office and staff of the Board of Internal Economy be established to oversee the study was not acceptable to me inasmuch as, in my view, it would have resulted in the staff of an agency which includes three representatives of the Cabinet participating actively in the direction and content of a management study of the Office of the Ombudsman and thereby being privy to the confidentiality of the Office. Consequently, I took the position that, as a result of the condition imposed by the Board of Internal Economy on the proposed management study, it was my intention not to pursue the matter of a management study further. However, after further correspondence with the Board and a meeting between my Finance Committee and the Secretary of the Board of Internal Economy, it was agreed that it was not the desire of the Board to participate actively in such study to the extent that might impinge on the confidentiality of this Office. It was decided that the Finance Committee in the Office of the Ombudsman would prepare terms of reference for a management study to be performed within the financial limits imposed by the Board, and would consult with the Board upon such terms of reference with a view to agreeing thereon before requesting tenders for the study.

Due to budgetary restraints, many of the services which the Office provides to all citizens of this Province have had to be curtailed. We have regrettably been forced to cancel all private hearings throughout the Province for the remainder of this fiscal year. In addition, we were unable to renew contracts of a number of employees whose contracts expired during the latter part of December, 1977 and early January, 1978. There are other areas that have been seriously affected. We were unable to retain the services of medical consultants and to travel throughout the Province to meet with complainants, particularly those in correctional facilities and psychiatric hospitals. We intend to re-institute all these services to the citizens of the Province after April 1, 1978 when we enter our next fiscal year.

The following is a breakdown of the total estimates for the Office of the Ombudsman for the fiscal year 1977-78:

OFFICE OF THE OMBUDSMAN
ESTIMATE BREAKDOWN
1977-78
(000's)

<u>Salaries and Wages</u>		\$2,565	
<u>Employee Benefits</u>		272	
<u>Transportation and Communications</u>			
Travel	\$151		
Communications and Mailing	6		
Telephone	<u>112</u>	269	
<u>Services</u>			
Communication Services	45		
Rental Services	70		
Building Rent	331		
Data Processing, Personnel Services, Training and Education, and Ombudsman's Conference	92		
Professional Services	88*		
North Pickering Court Reporting	200		
Special Services	5		
Purchased Repair	<u>37</u>	868	
<u>Supplies and Equipment</u>			
Purchase of Machinery and Equipment	34		
Personal and Household Goods	30		
Fuels, Parts and Accessories	18		
Office Supplies and Devices	53		
Books, Maps and Publications including printing reports	38		
Miscellaneous Goods and Utilities	13		
Federal Sales Tax	<u>8</u>	<u>194</u>	
			<u>\$4,168</u>

*Excludes \$25,000 for Management Study

THE COMPLAINTS

Since the inception of the Office of the Ombudsman in May of 1975 until the cut-off date for this Report, September 30, 1977, we received complaints for which we opened a total of 13,562 files. In addition, the Office dealt with 16,469 informal inquiries. Since May of 1975, we have closed a total of 11,558 files which involved 3,812 complaints which were within the Ombudsman's jurisdiction.

During the period covered by this Third Report, April 1, 1977 to September 30, 1977, the Office of the Ombudsman received 3,255 new complaints and also dealt with several thousand informal citizen inquiries which did not necessitate

the opening of formal complaint files. Although the number of informal inquiries was lower (because of the summer months covered by this Report) than projected in our Second Report, we estimate that the Office handles about 10,000 such inquiries each calendar year.

The 3,255 new complaints received indicates that, as outlined in our Second Report, the Office of the Ombudsman continues to receive complaints at a rate of about 500 per month or 6,000 per year. Considering that this monthly/annual rate has remained steady since our last Report, it appears that, barring unforeseen circumstances, this rate will represent the average number of complaints to be dealt with by the Ombudsman each year.

Of the 3,255 new complaints received during the six-month reporting period, 65% were mailed to our Office by complainants, 20% were received through personal interviews in Toronto, and 15% came from complainants who attended our private hearings to speak with our Interviewers, Investigators and legal staff.

The following table highlights some of the data contained in this Report.

HIGHLIGHTS

FILES: OPENED 3,255
CLOSED 3,381

INFORMAL : 4,200
INQUIRIES :

COMPLAINTS : 3,652
CLOSED*

BY JURISDICTION	BY ORGANIZATION
1,031 within jurisdiction	1,984 involved Ontario Government Ministries or Agencies
216 information requests	815 involved private agencies, firms or individuals
41 jurisdiction undetermined	406 involved municipalities or local police forces
15 multiple organizations**	245 involved federal government departments or agencies
1,683 outside jurisdiction	171 involved courts
681 premature	46 involved international, other provinces or unspecified
<hr/> 3,667 Reported Line Summaries	<hr/> 3,667 Reported Line Summaries

*Some files involved more than one complaint.

**Some complaints involved more than one organization.

Of the 3,395 complaints dealt with in which jurisdiction was determined, 1,031 or 30% were within the jurisdiction of the Ombudsman. This is a decrease from the 36% which were within the Ombudsman's jurisdiction as reported in our Second Report to the Legislature, but it is definitely not an indication that the Office is dealing with an increased number of non-jurisdictional matters.

Since our last Report, the Office has made special efforts to complete as many complaint investigations as possible and, by employing a number of summer students, most of whom worked on non-jurisdictional cases, we have been able to lower the number of "in progress" complaint files, especially non-jurisdictional cases. This emphasis, particularly during the summer, on completing non-jurisdictional complaint files naturally resulted in the increased number of non-jurisdictional complaints shown in this Report.

I remain confident that an increasing number of citizen complaints brought to our Office will fall within the jurisdiction of the Ombudsman and, in fact, an analysis of the 2,355 "in progress" files as of September 30, 1977, shows that 1,498 or 64% were determined to be within the jurisdiction of our Office.

It is also of interest to note that during this reporting period, the percentage of complaints within our jurisdiction which were brought to our attention at private hearings was higher than that reflected in our overall total.

Eight private hearings were held between April 1 and September 30, 1977. This was a smaller number of hearings than usual because of my decision not to hold hearings from April 15 to June 20, the period of the Provincial election campaign.

Private hearings were held in Fort Erie, St. Catharines, Bancroft, Barry's Bay, Belleville, North Bay, Lindsay and Newmarket and they attracted 428 individuals who filed 477 separate complaints with members of my staff.

Of the 477 complaints, we determined that 221 or 46% were within the jurisdiction of the Ombudsman.

These figures convince me once again of the importance of our private hearings to the people of Ontario and they indicate that the limits of the Ombudsman's jurisdiction are becoming better known.

Once again, more complaints (517) originated from Northern Ontario than any other region of the Province. The Ontario North also had the highest complaint-to-population ratio. The Office of the Ombudsman will continue to endeavour to assist the citizens of Northern Ontario with the resolution of their grievances.

As was shown in our previous Reports, a large number of outside jurisdiction complaints concerned citizen grievances

with municipalities, universities and other bodies financed in whole or substantial part by the Provincial Government. Because they are not considered "governmental organizations" as defined by The Ombudsman Act, the Ombudsman is unable to investigate formally such complaints.

During this six-month reporting period, there were 406 such complaints dealing with various municipal departments, including 84 grievances against local police forces.

As I have already stated in the Ombudsman's First and Second Reports, I feel that the Legislature should be urged to give the Ombudsman jurisdiction to deal with such cases. It is my belief that such added jurisdiction would not involve excessive additional expense but I am confident that it would allow hundreds of citizens the opportunity to have their complaints dealt with by the impartial investigative staff of our Office.

This Third Report also highlights the fact that 815 complaints concerning private agencies, associations or individuals were brought to the Ombudsman's attention between April 1 and September 30, 1977.

Such cases, like those involving municipal authorities and federal departments and agencies, are beyond the scope of the Ombudsman's jurisdiction but, as I have noted in my previous Reports and in accordance with the views expressed by several M.P.P.'s during the debates on The Ombudsman Act in 1975, members of my staff continue to make every reasonable effort to help each citizen who comes to the Office of the Ombudsman for assistance.

Such assistance, of course, does not entail a full investigation such as is usually the case with jurisdictional complaints but neither does it, in my view, call for a simple "form letter" approach which only advises the complainant of our lack of jurisdiction.

As can be seen from a reading of the sample letters contained in this Report which are sent to complainants with concerns outside the jurisdiction of the Ombudsman, our assistance usually consists of ensuring that the complainant is put into direct contact with the agency or individual who can help to resolve the citizen's problem. To do less, in my view, would be inconsistent with the philosophy behind the creation of the Office of the Ombudsman in the Province of Ontario.

The sample letters also indicate the efforts made by my staff on behalf of citizens whose complaints cannot be formally dealt with by the Office of the Ombudsman because they have not exhausted all existing appeal procedures concerning their problems.

Under the legislation establishing this Office, the Ombudsman is precluded from investigating any complaint where a right of appeal exists which has not been exercised.

During the period covered by this Report, 681 such citizen complaints were dealt with and were determined to be "premature" because the complainant still had a right of appeal open to him.

In such cases, my staff informs complainants of the existing remedies open to them and also advises complainants that if, after all existing procedures have been followed, they are still dissatisfied, the Ombudsman would then have, in most cases, the jurisdiction to investigate the complaint.

As I have pointed out in my previous Reports, the fact that hundreds of citizens appeal to the Ombudsman for help before they have exhausted all remedies open to them indicates that the various Ministries and agencies of the Government should take special care to ensure that all citizens affected by a decision of a governmental organization are informed in clear and precise language of the appeal rights and procedures available to them.

The table at the end of this Introduction, which shows the organizational breakdown of the 3,652 separate complaints dealt with and closed during the reporting period, illustrates that of the 1,984 complaints involving Ontario Government Ministries, 588 involved those Ministries dealing with the Province's justice system. Of that number, 488 were from inmates in Ontario's many jails, detention centres and correctional centres.

In light of my feeling that the Ombudsman role plays an important part in helping to relieve tensions within correctional facilities and in light of my recently released Correctional Institutions Report, I am pleased to see that the number of complaints against the justice field has dropped dramatically as a percentage of all complaints. (During this reporting period, 30% of all complaints directed against governmental organizations concerned the justice system. In our Second Report, covering the period from July 11, 1976 to March 31, 1977, similar complaints comprised 42% of all such grievances.)

In addition to the already-mentioned complaints concerning the justice system, the Office of the Ombudsman also received 171 grievances concerning courts, 101 complaints against individual lawyers and 20 complaints involving The Law Society of Upper Canada. Complaints in this area are outside the Ombudsman's jurisdiction. There has also been a decrease in the number of complaints in this area as a percentage of all complaints. It will be recalled that in my First Annual Report, I expressed concern about the high percentage of complaints involving the Province's justice system that had been received by the Office of the Ombudsman. When I appeared before the Select Committee

on the Ombudsman on February 1, 1977 to discuss my First Annual Report, I suggested to the members of that Committee that it might be premature for the Committee to take any action at that time and I recommended that the Committee should wait to see whether future Reports of the Ombudsman also disclose a disproportionately high percentage of complaints against the justice system. I am pleased now to be able to report a decline in the number of complaints brought to my Office's attention in this area.

Turning to complaints against Ontario Government Agencies, The Workmen's Compensation Board, with a total of 386 complaints against that agency, again proved to be the body against which most complaints were made.

As I pointed out in my Second Report, however, it must be borne in mind that the number of complaints forwarded to the Ombudsman is a miniscule fraction of the 434,000 claims dealt with annually by the Board. It should also be pointed out that the Office of the Ombudsman supported the decision of The Workmen's Compensation Board in 44% of the complaints against the Board which were resolved following our investigation.

Chapter Four of this Report outlines in detail 100 cases which indicate the wide variety of problems brought to the Ombudsman's attention. Among the cases in Chapter Four are situations such as:

--The problem faced by a blind physiotherapist who had been practising for 22 years but who was unable to obtain insured coverage under the Ontario Health Insurance Plan for his practice. Although he had approached Ministry of Health officials, he had been told that OHIP coverage was closed to all physiotherapy practices except those in "underserviced areas". The complainant contended that special allowance should be made for blind physiotherapists. Before reaching any final conclusion regarding this case, we asked the Ministry if it might reconsider the complainant's request but the Ministry refused to do so. We then formally recommended that the Ministry make an exception in this instance and the Ministry replied that it would be prepared to do so if the complainant moved to one of five communities in need of physiotherapy services. The Ombudsman felt this condition was unnecessary and after further contact with the Deputy Minister of Health, the Ombudsman was gratified to learn that the blind physiotherapist's practice was approved for OHIP coverage without the physiotherapist being required to relocate. (See Detailed Summary # 39, Chapter IV)

* * * * *

--The resolution of a dispute between a complainant and the Provincial Benefits Branch of the Ministry of Community and Social Services. The complainant was in receipt of Family Benefits and was advised by his field worker that he would be reimbursed for materials needed to make emergency repairs to his roof. When the complainant submitted his account in the amount of

\$331.80, however, a senior Ministry official denied his claim and the official's decision was upheld by the Social Assistance Review Board. The Ombudsman advised the Minister that it was possible for him to make a formal recommendation to grant the complainant's request but the Minister upheld his officials. Subsequently, the Ombudsman made a formal recommendation to the Minister and within three weeks we received a copy of an Order-in-Council approved by Her Honour the Lieutenant Governor authorizing the payment of \$331.80 to the complainant pursuant to the recommendation of the Ombudsman. (See Detailed Summary # 8, Chapter IV)

* * * * *

--Our assistance to an inmate in a maximum-security correctional institution who was erroneously labelled as a 'diddler' (sex offender) by fellow inmates and who was concerned for his personal safety. Our investigation revealed that the complainant had never been convicted of a sexual offence and the Ombudsman forwarded a letter to the inmate confirming the results of the investigation. The complainant subsequently informed the Ombudsman that the letter had been of great assistance to him in dealing with his fellow inmates. (See Detailed Summary # 18, Chapter IV)

* * * * *

--The Ministry of Revenue's granting of a \$1,000 Ontario Home Buyers Grant to a complainant who had not taken up possession of his new home by the required date. The complainant informed us that he had completed the purchase of his home from the previous owner by the required date but had allowed the former owner to remain in the dwelling after the grant program expiry date because the former owner had to undergo surgery. Our investigation revealed that the complainant's problem was similar to one of over 100 complaints received by the Ombudsman regarding the grant program. In that similar case, the Ministry of Revenue had allowed the complainant's claim. Soon after pointing this out to the Ministry officials, we were informed by the Deputy Minister that this complainant's Ontario Home Buyers Grant application had been approved and that an initial grant payment of \$1,000 would be made. The complainant subsequently wrote the Ombudsman thanking him and his staff for their "assistance and dedicated effort". (See Detailed Summary # 65, Chapter IV)

* * * * *

--The installation of a filtration system to ensure that a Northern Ontario complainant's well water would be of a quality equivalent to that which was available prior to the construction of an expressway near his home. The Ministry of Transportation and Communications had, three years earlier, provided the complainant with a new well when his former well dried up completely as a result of the highway construction. A year later, however, the complainant began to notice iron deposits

in the water which were discolouring his family's dishes and clothes, turning articles a brownish-red colour. He contended that the Ministry should bear the cost of installing a filtration system and, after a thorough investigation, the Ombudsman informed the Deputy Minister that there existed sufficient grounds for his making a formal recommendation which would support the complainant. Within a short period, the Deputy Minister advised the Ombudsman that the Ministry would obtain a filtration system and ensure that the complainant was supplied with a water system of good quality. (See Detailed Summary # 72, Chapter IV)

* * * * *

--The complaint of an Eastern Ontario doctor, who also administered and was part-owner of a nursing home. He contended that the Ministry of Health had improperly made an award to another individual for a 60-bed nursing home in the area. The Ombudsman's investigation of this complaint included interviews with over 30 people, several of them under oath. In his 69-page final report, the Ombudsman concluded that the award had been made to a large extent on "irrelevant grounds" and "irrelevant considerations". The complainant's proposal for the nursing home was considered the second choice of the Ministry's Extended Care Program Committee, the Ombudsman noted, and the successful applicant's proposal had not been expressly considered because it did not contain sufficient financial information. Notwithstanding this defect, the applicant was awarded the nursing home. The Ombudsman found that the Ministry emphasized economic consideration in its decision instead of the level of care patients would receive.

The complainant also contended that political patronage was involved in the award, but after a thorough investigation, the Ombudsman concluded that this allegation was unfounded.

The Ombudsman's report said that he had not recommended the cancellation of the original decision of the Ministry because to do so would be to perpetrate "a very serious injustice" to the successful recipient because of the expenses, commitments and contractual obligations already undertaken. In his report, the Ombudsman stated: "I would not have hesitated to have made such a recommendation had I thought that the best interests of the future occupants of the nursing home could only be served by such a recommendation. This I find not to be the case." The Ombudsman concluded that he was reasonably confident that the individual to whom the award was made "is possessed of sufficient sense and responsibility to discharge his duties as a nursing home operator in the premises presently planned by him in a way that will not give rise to complaints by the future occupants of his nursing home."

In his report, the Ombudsman recommended that, in future, all applicants be informed well in advance of the due date for applications and they should also be informed of the criteria upon which the Ministry intends to rely in making its decision.

The Ombudsman also recommended that every unsuccessful candidate be provided with written reasons as to why his proposal was rejected, based on the criteria.

A third recommendation dealt with a proposed amendment to The Nursing Homes Act, 1972, to allow a successful candidate for the construction of a new home to make application for a conditional licence immediately upon the making of the award to him.

The Minister of Health subsequently informed the Ombudsman that he would implement the recommendations and said, "I appreciated receiving your comprehensive and thorough Report . . . and feel that, generally, your comments have been most reasonable." (See Detailed Summary # 40, Chapter IV)

* * * * *

--The agreement of officials of the Ministry of Consumer and Commercial Relations that the Residential Premises Rent Review Board would not oppose judicial review of two decisions at hearings to determine whether rental increases should be granted to two landlords. In the first case, the tenant alleged that a Rent Review Officer had granted her landlord an increase in her rent from \$219 to \$263 a month and an increase in parking rental from \$10 to \$15 a month. The complainant alleged that the landlord had not presented documentation to support his projected increases. She also said that the landlord had arrived late at the hearing and had left before the hearing had been completed. She felt that the hearing had been conducted unfairly. As a result of our investigation, the Ombudsman concluded that he could possibly find that (a) the Board had exercised its discretion improperly in deciding to give no weight to the tenant's evidence in the absence of the landlord and (b) that the Board exercised its discretion improperly by basing its order for a rent increase on insufficient documentation. The Chairman of the Board subsequently informed the Ombudsman that he agreed that the hearing had been unsatisfactory and that the Board would not oppose an application for judicial review and would not oppose an order for payment of the applicant's legal costs.

In the second case, four tenants complained that the Board had improperly allowed proposed rent increases and our investigation revealed that both the Rent Review Officer at the original hearing and the Review Board had exceeded their jurisdiction to hear this matter as neither the tenants nor the landlord had followed the provisions of The Residential Premises Rent Review Act. The Minister of Consumer and Commercial Relations subsequently informed the Ombudsman that the Rent Review Board would not oppose an application for judicial review of the Board's decision, nor would it oppose an order for payment of the legal costs of the applicants. On the Ombudsman's recommendation, the Minister also had his staff prepare amendments to the legislation which would give the Rent Review Board the power to review and alter its decisions, thus eliminating the need for automatic judicial review of its rulings when these were disputed.

The Residential Premises Rent Review Amendment Act, 1977, was later passed by the Legislature and received Royal Assent on April 29, 1977. (See Detailed Summary # 11, Chapter IV)

* * * * *

--The Criminal Injuries Compensation Board's decision to allow hearings to five complainants whose claims for compensation were made to the Board after the expiration of its one year limitation period. In the first case, involving a woman who had been raped by a number of men in 1971 and who had not filed an application with the Board until 1976, the Ombudsman pointed out to the Board that because of the circumstances of the case and the fact that throughout the lengthy police investigation and court hearings the complainant was never advised of her right to apply to the Board, the Board should hold a hearing on the complainant's application to extend the Board's limitation period. The Chairman of the Board later advised the Ombudsman that the Board would dispense with a hearing on the application for an extension of the limitation period and would, instead, hold a hearing on the application for compensation itself.

In a second case, the complainant's husband had been murdered in 1969, two years before the creation of the Criminal Injuries Compensation Board. The complainant's husband had been the sole support for her and their five children. Because the complainant spoke English poorly, she did not become aware of the Board's existence until 1975. When she applied for compensation, her application was denied on the basis of the Board's one year limitation period. The community law office which acted for the complainant brought the matter to the Ombudsman and complained that the Board had not given it the opportunity to present the case for an extension of the limitation period and had not provided adequate reasons for its denial of the widow's application. After the Ombudsman became involved and after he had notified the Attorney General of his intention to investigate the complaint, a second application for compensation was made but this too was denied. The Ombudsman then met with the Chairman of the Criminal Injuries Compensation Board who advised him that the Board had rejected the two applications on the grounds that the application was uninvited and came six years after the complainant's husband had been murdered. The Ombudsman then made a recommendation that the Board hold a hearing upon the complainant's application to extend the limitation period. At the same time, the Ombudsman expressed his concern with the lack of publicity to increase the public's awareness of the Board. The Board subsequently granted the complainant a hearing to determine whether it would extend the limitation period. It also advised the Ombudsman that police officers are now instructed to advise victims of crime and their dependents of the compensation legislation. The Chairman of the Board also informed the Ombudsman that Crown Attorneys receive similar instructions and that information notices would be posted in all hospital emergency rooms. In three other cases, the Ombudsman also recommended that the Board hold hearings concerning extending the limitation period. In one of these

cases, the Board agreed to such a hearing and in the two remaining cases, the Board decided to by-pass the extension of the limitation period in favour of hearings on the merits of the applications for compensation themselves. (See Detailed Summaries # 3 and 4, Chapter IV)

These cases illustrate the excellent co-operation and assistance our Office receives from the Criminal Injuries Compensation Board. We have held a number of meetings with the Chairman and other officials of the Board and most suitable arrangements have been arrived at for the processing and resolution of these complaints. We are extremely impressed with the compassionate and sympathetic approach the Board takes when dealing with the cases brought before it. Without the ongoing co-operation of the Chairman, Mr. Allan Grossman, and the Vice-Chairman, Mr. Shaun MacGrath, our work would be immeasurably more difficult.

* * * * *

--The case of the landowner near Whitby who contended that she was not properly compensated for land purchased by the Ministry of Housing as part of an Ontario Housing Corporation land assembly project. The complainant alleged that she was not paid a sufficient sum for her 37.14 acres compared to the amounts paid to abutting property owners who had also sold their land to the OHC. The complainant's land had been purchased on behalf of the OHC at a price of \$129,000. Under the terms of the agreement, the complainant retained 2.34 acres of her original 40 acres, upon which were located her house and a large pond. The Ministry of Government Services leased back to the complainant the 34.14 acres for approximately \$600 per annum, which covered the yearly property tax payable on the property. During our investigation, OHC officials informed us that the real estate firm acting on its behalf was instructed to maintain confidentiality regarding the principal purchaser and also to conduct its negotiations observing the highest ethical standards, without exerting pressure or influence on the owners. The OHC subsequently provided us with the details and amounts of all transactions relating to its North Whitby Land Assembly project and particularly with reference to those lands considered to be adjacent to the complainant's property. In addition to being satisfied with the explanation given by OHC officials for the differential in price paid to the complainant, our investigation also revealed that she had listed her 40-acre parcel for sale prior to being approached by the OHC real estate representative firm. At that time, the property was listed for \$125,000 for the 40-acre property, including all the buildings. It was the OHC's contention that the complainant had received a better price for her property, considering that she retained 2.34 acres and all buildings and also retained about 300 feet, or about half the road frontage.

Based on our investigation, we informed the complainant that we could not conclude that she had been unfairly treated by the OHC. In the report of our investigation to the Deputy Minister of Housing, the Ombudsman stated, in part, "I have judged this complaint on its own particular merits based on

the facts, and in no way shall my opinion on this matter be a reflection of my concerns over the South Cayuga Land Assembly case which I am still investigating." (See Detailed Summary # 49, Chapter IV)

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--The problem of a property owner whose neighbour was granted a development permit for land within the Niagara Escarpment Development Control Area. The complainant's neighbour applied for a development permit after he had received a severance from the local Land Division Committee. He wished to build another house on the newly-severed part of his property and sell the remaining house and property. The Niagara Escarpment Commission approved a development permit, but the matter was appealed by the complainant and others to the Minister of Housing who, in his discretion, agreed with the recommendation of a Hearing Officer that the development permit should be denied. Later, the complainant's neighbour submitted a second application for a permit which was approved again by the Commission. Two Hearing Officers, however, after receiving representations from neighbouring property owners, recommended to the Minister that he again exercise his discretion and deny the permit. This time, however, the Minister approved the issuance of the permit and the complainant contended that it was improper for the Minister to grant the permit when none of the circumstances surrounding the application for the permit had substantially changed. Our investigation revealed that, in law, the complainant had no grounds on which to make a formal complaint about the permit because her property was about 800 feet from that of her neighbour's and, under The Niagara Escarpment Planning and Development Act, only those whose lands were within 400 feet of the property affected had a legal right to make objections. Notwithstanding this, the complainant was sent a copy of the decision respecting the first application and she subsequently was advised by the Minister that he had altered his decision respecting the issuance of a development permit after evaluating the second application "as if it were an original matter, that is, without prejudice from the first hearing." We advised the complainant that we could find no fault with the Minister's exercise of his discretionary power under the legislation, but we wrote the Minister reminding him that under The Statutory Powers Procedure Act, he could be compelled to give written reasons for his decision. The Ombudsman recommended to the Minister that he provide written reasons in the future in cases where his decision was contrary to the recommendation of a Hearing Officer. In response, the Minister advised the Ombudsman that, "in no little part due to inquiries from your office, my staff has been reviewing the documentation procedure . . .[and]. . . I have concluded that your recommendation is quite acceptable in keeping with my own inclinations to make government a more open process. In the future, therefore, it is my intention to give reasons for my decision where it is contrary to the Hearing Officer's recommendation." (See Detailed Summary # 51, Chapter IV)

RECOMMENDATIONS DENIED

During this reporting period, there were 5 cases where, upon completion of our investigation, I made recommendations pursuant to Section 22 of The Ombudsman Act which were denied by the "governmental organization" involved. I am outlining highlights of these cases in this Introduction. In addition, these five cases are reported in detail in Chapter IV of this Report.

Section 22(4) of The Ombudsman Act states:

"If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion, after considering the comments, if any, made by or on behalf of any governmental organization affected, may send a copy of the report and recommendations to the Premier, and may thereafter make such report to the Assembly on the matter as he thinks fit."

In its Third Report, issued on November 25, 1977, when referring to four other cases reported in my Second Report in which my recommendations were denied by the governmental organizations to which they had been made, the Select Committee on the Ombudsman commented on its interpretation of Section 22(4) of the Act as follows:

"Procedure Of The Ombudsman When A Recommendation Is Denied By A Governmental Organization"

In his Second Report, the Ombudsman has referenced four recommendations made by him pursuant to Section 22(3) of The Ombudsman Act which have been, for various reasons, rejected by the governmental organization in question. However, in each case, the Ombudsman considered the governmental organizations's response to his recommendations to be both adequate and appropriate and accordingly did not exercise his discretion to send a copy of his report and recommendations to the Premier and thereafter, if necessary, report to the Assembly.

Instead, the Ombudsman referred the matters to the Select Committee. In each case, the Ombudsman's office has confirmed that, notwithstanding the responses of each governmental organization, the Ombudsman continues to fully support his recommendations before the Committee. He has in effect requested that the Committee in each case support his recommendation and so report to the Legislature for implementation.

At page 33 of its Second Report, the Committee stated that:

'the functions of the Ombudsman must be carried out with scrupulous adherence to the provisions of the statute.'

In the Committee's opinion, in these circumstances, the Ombudsman has not adhered to the provision of the statute. By referring the recommendations directly to the Legislature in his Second Report, while continuing to seek the relief in accordance with the terms of his recommendations, he has eliminated the step to the Premier's Office as required by Section 22(4) of The Ombudsman Act.

This Committee will, when the circumstances warrant, give full support to a recommendation made by the Ombudsman rejected by a governmental organization. However, the Committee in those situations will require that the Ombudsman has, in every respect, carried out the necessary provisions of the statute. To do less would be to expose the Ombudsman to criticism and might undermine the confidence which the public must have in his office."

In view of the Select Committee's mandate, which is, in part, "to review from time to time the reports of the Ombudsman as they become available, to report thereon to the Legislature, and to make such recommendations as the Committee deems appropriate", its position in connection with these four cases is, I believe, mistaken. My view that the Committee's position in this regard is wrong is concurred with by all eight members of the legal staff of the Office of the Ombudsman. We are all of the view that the Select Committee on the Ombudsman can properly consider, report on, and make recommendations with respect to cases, reported in my Reports made pursuant to Section 12 of The Ombudsman Act. This error on the part of the Committee will hopefully be made clear to it in our reply to its Third Report. However, so as not to deprive complainants whose grievances are upheld by the Ombudsman of every possible avenue of redress and so as to avoid any undue delay in the consideration of their cases, I wrote to the Premier on December 22, 1977 as follows:

"As you know, The Ombudsman Act provides in Section 22(4) that when I consider that there has been no adequate and appropriate action taken after I have made a report and recommendation to a governmental organization, I have the discretion to send a copy of the report and recommendations to you.

In the past I have been reluctant for various reasons to exercise this discretion to send copies of my reports to you and have rarely done so. Frankly, I didn't think it necessary to trouble you in every such case. Pickering is obviously the sort of case that should go to you. Legions of other cases do not possess

its ramifications and I saw no need to get you involved.

Recently, in its Third Report, the Select Committee on the Ombudsman has made comments reflecting its views on my failure to exercise my discretion in favour of sending you my report in cases where I continue to believe in the fairness and propriety of the report and recommendation I made, even though the governmental organization has declined to take any action. The Committee's comments on the subject can be found on pages 36 and 37 of its Report. I enclose a photocopy.

In my respectful view, the Select Committee has made serious errors in interpreting the subsection. The Committee members appear to believe that because in a given case I did not send a copy of my report and recommendations to you, I necessarily found the response of the governmental organization to be adequate and appropriate. This, I feel, is a distortion of the meaning of the subsection. I may feel that 'no action (has been) taken which seems . . . to be adequate and appropriate' and still elect not to send a copy of the report to you.

In several cases reported in my Second Report to the Legislature, the governmental organizations involved had declined to implement my recommendations. I continued to believe they were appropriate and reported upon them in detail in my Report to the Legislature, made pursuant to Section 12 of The Ombudsman Act. I did not ask the Committee to implement my recommendation. I expected, however, that the Committee would consider the cases, report upon them and make recommendations relating to them to the Legislature, as that is its mandate.

The Select Committee has taken the position in its Report that the cases are not properly before the Committee. It has stated that because I have not complied with the requirements of Section 22(4), it will not support my recommendations in such cases.

As I have noted, I think the Committee is wrong. However, to avoid a repetition of this situation, following my next Report to the Legislature, I will likely be sending to you more reports and recommendations

wherein the governmental organization has taken no adequate and appropriate action. Were I not to do so, the result would be to deprive a complainant of further consideration he might otherwise receive.

This letter is simply to notify you of my intentions in this regard."

In all five cases referred to in this Report in which my recommendations were denied by the governmental organization concerned, I have sent a copy of my report and recommendation and a copy of any comments made by the governmental organization affected to the Premier pursuant to Sections 22(4) and 22(5) of The Ombudsman Act.

In one case (See Detailed Summary # 10, Chapter IV) the Premier has responded to my report and recommendation indicating that the Ministry concerned is unable to alter its decision not to follow my recommendation. In the other four cases, the Premier has not yet responded to my reports and recommendations. This is understandable since my reports and recommendations in these four cases were only sent to him on February 3, 1978. The future course in connection with all of these five cases will be determined after we have received the Premier's response to the remaining four. It is my hope that these five cases which are being brought to the attention of the Legislature will be reviewed by the Select Committee on the Ombudsman and that the Committee, after its consideration of these cases, will report upon them and make appropriate recommendations to the Legislature.

The five cases involved:

--The Ombudsman's recommendation that an injured worker be compensated for lost wages which resulted from an accident in 1959. The complainant had continuing and severe back pain and underwent two operations subsequent to his industrial accident and was treated by physicians and a chiropractor. Throughout this period, except when under medical treatment or when recovering from his operations, the complainant continued to work. The 64-year old worker has now been laid off work because he cannot handle heavy duties. The complainant had originally applied for Workmen's Compensation benefits in 1960, but his application was denied, as were all appeals through the Board's appeal process.

Based on a thorough investigation, including the obtaining of qualified medical opinions, the Ombudsman concluded that "a relationship between the industrial accident of May 27, 1957 and the on-going back disability does exist." The Ombudsman recommended that the Board's previous decision be cancelled and that the complainant be allowed benefits for a permanent back disability. He also found the complainant entitled to Total Temporary benefits for the time he was off work due to back disability in 1959, 1961, 1963, 1971 and 1973. In his reply

to the Ombudsman's report and recommendation, the Chairman of The Workmen's Compensation Board said, in part, "the Board does not propose to take any steps with respect to the recommendation." (See Detailed Summary # 75, Chapter IV)

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--The Ombudsman's recommendation that an injured worker be granted a 25% disability award by The Workmen's Compensation Board for a psychogenic disability arising out of an industrial accident in 1971. At that time, the complainant fell while working and suffered skull and facial injuries. She received Total Temporary benefits from the Board for four months but returned to work for only three days as she began to suffer severe dizziness and loss of hearing in her left ear.

After reviewing the medical evidence, the Ombudsman agreed with psychiatric reports which indicate that the complainant is totally disabled due to a psychiatric problem - a problem which bears a relationship to the original accident and the disability. Subsequent to the Ombudsman making his recommendation that the complainant be granted a 25% disability award retroactive to April, 1971, the Chairman of the Board informed the Ombudsman that, "the Board does not propose to take any steps with respect to the Recommendation . . ." (See Detailed Summary # 77, Chapter IV)

* * * * *

--The Ombudsman's recommendation that an automobile assembly line worker be compensated by The Workmen's Compensation Board for lost time from work as a result of a back injury. In late July, 1974, the complainant developed a kidney infection which caused him considerable pain. On July 31, 1974, while installing glass in car doors, he felt a sharp pain in his lower back and his condition was subsequently diagnosed as a lumbosacral strain superimposed on a kidney infection. A claim for Workmen's Compensation benefits was originally allowed and the claimant received \$1,100. This amount was returned to the Board, however, after it received a letter from the accident employer. Thereafter, the Board denied the complainant any compensation.

After a thorough investigation, the Ombudsman concluded that the complainant's back problem was caused by a compensable injury arising out of his employment. The Ombudsman therefore recommended that the complainant be granted compensation benefits for time lost from work, but the Chairman of the Board responded by advising the Ombudsman that "the Board does not intend to take any steps with respect to the recommendation. (See Detailed Summary # 76, Chapter IV)

* * * * *

--The Ombudsman's recommendation that the Public Service Grievance Board meet on an unofficial basis and communicate to the officials of a certain community college responsible for

decisions regarding personnel, the Board's view that, in view of the Ombudsman's findings concerning an Award by the Board, the College should reinstate the complainant without compensation. The complainant was a former staff member of a College of Applied Arts and Technology who was dismissed from his teaching position following a complaint that he had placed his hand on the leg of one of his female students. The complainant grieved his dismissal; however, the grievance, heard by the Public Service Grievance Board, was not allowed.

The Ombudsman concluded that, although the complainant's conduct was inexcusable, the Board had erred in failing to address itself to the question of whether it should have exercised its discretion to reduce the penalty to one which was just and reasonable in the circumstances. This conclusion was based largely on the Board's own considered assessment of the significance of the complainant's conduct. The recommendation was made following a positive report concerning the complainant's mental health made by an independent psychiatrist retained by the Ombudsman. (See Detailed Summary # 58, Chapter IV)

* * * * *

--The Ombudsman's recommendation that a letter be sent by a representative of the Ministry of Community and Social Services to a former employee expressing regret for certain procedural defects which occurred during the Ministry's processing of his grievances and his dismissal. The complainant had been on the permanent staff of the Ministry for nine months when his supervisor recommended in May of 1972 that his employment be terminated. At the subsequent hearing into the issue of the complainant's job performance, the Chairman requested that additional information be gathered and included in a report to him. One month after this report had been submitted, the complainant was notified that he would be dismissed if his work performance did not show significant improvement and that his annual merit increase was being deferred for six months. This action was taken without the complainant having been provided with an opportunity to rebut the information included in the report. The complainant then filed a grievance concerning this deferral of his merit increase, as well as two other grievances; which grievances were subsequently disallowed by the Chairman of the Ministry's grievance hearing.

Shortly after this, the complainant was dismissed and he then added the grievance of "unjust dismissal" to the three other working grievances which he had already submitted to the Public Service Grievance Board. In early 1973, the Public Service Grievance Board disallowed three of these grievances, but it did uphold the grievance pertaining to the deferment of the complainant's merit increase.

The Ombudsman concluded that the initial hearing into the complainant's job performance had not been properly conducted since information was requested to be submitted at a later date; which information resulted in the deferral of the complainant's merit increase. He had not been provided with an opportunity to refute this information during the hearing.

The Ombudsman further concluded that with respect to the Ministry's grievance hearing that the Deputy Minister erred in his delegation to the Chairman of the hearing since the Deputy Minister did not have the authority to delegate his duties in this regard. The Ombudsman also determined that the Chairman had had previous involvement in the matter when he reviewed the complainant's job performance prior to his suspension without pay. Consequently, the Ombudsman recommended to the Minister of Community and Social Services that a letter of explanation be sent to the complainant acknowledging and expressing regret for these defects. The Ombudsman additionally recommended that the regulations to the Public Service Act be amended to enable the Deputy Minister to delegate his other responsibilities in this regard.

The Minister responded that he would be referring the latter recommendation to the Chairman of the Management Board of Cabinet. However, he also indicated that with respect to the letter of explanation that he was unable to follow this recommendation.

The Ombudsman's report was subsequently sent to the Premier who indicated that after further consideration the Ministry was still unable to alter its previous decision not to implement the Ombudsman's recommendation with respect to the letter of explanation. (See Detailed Summary # 10, Chapter IV)

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CONCLUSION

It becomes increasingly apparent to those of us who serve the people of Ontario in the Office of the Ombudsman as we watch it evolve that its importance to the people cannot be over-estimated. Its very presence and its proven willingness to serve the people of the Province, as it has already done in thousands of cases since its inception, has given the public a feeling of security that there is a watchdog available to which it can turn. Calls for help which come from people of every race, colour, creed and station in life have been answered. The Office has not hesitated either to vindicate on hundreds of occasions the actions of civil servants whose fairness has been questioned. In other words, we have attempted to be and, I think, have succeeded in being both representative and objective.

The cases brought to us indicate that the majority of complaints come to us from people who are poor and disadvantaged. It goes without saying that such cases will always have top priority in any office presided over by me. I have, however, been careful to resist the suggestion sometimes put forward that I should decline our services to people who are well-to-do. In other words, I have declined to apply a means test. The substantial man who feels himself to be the victim of unfair treatment at the hands of the bureaucracy has learned that we accord to him the same right to avail himself of the Office of the Ombudsman as is given to everyone else.

In the result, the Office of the Ombudsman has been established in Ontario as the servant of all the people.

On the occasion of our National Conference, one of the highlights was the address delivered to us by His Eminence George B. Cardinal Flahiff, Archbishop of Winnipeg. He admonished the Ombudsmen of Canada "to be experts in humanity" and went on to say:

"The Ombudsman is unquestionably regarded as the champion of the little fellow. The greatest innovative feature of the Ombudsman's office is surely that it provides an effective recourse for those who otherwise because of their inexperience or their limited resources or their inauspicious status might be trampled by an established bureaucracy which is certainly not evil but which is necessarily as unequipped to deal with the unpredictable human deviations as is the computer to interpret the faintest emotional overtone of its input. From this creative opportunity of being the spokesman for those who cannot adequately speak for themselves, there follows a capital challenge an Ombudsman faces.

Certainly the Ombudsman must be technically and professionally competent and must shine for fairness and even-handed dealing whenever it is necessary to correct or to supplement the provisions of law or their administration. It seems to me nevertheless that the very highest and the most mandatory qualification is to be, besides all this, profoundly interested in and committed to the humanness of the human individual.

. . . The Ombudsman to my mind must be able to say, and adequate provision must be made for the Ombudsman to say effectively, with the Ancient Roman leader - 'I am a human being and nothing human is foreign to me'."

These are words of inspiration which my staff and I in Ontario will never cease to keep in mind.

COMPLAINTS BY ORGANIZATION

<u>GOVERNMENT OF ONTARIO</u> <u>Ministries/Agencies</u>	<u>Within</u> <u>Jurisdiction</u>	<u>Outside</u> <u>Jurisdiction</u>	<u>Not</u> <u>Determined</u>	<u>Information</u> <u>Requests/</u> <u>Submissions</u>	<u>Total</u>
Agriculture and Food	4	2		3	9
A.R.D.A.	1				1
Crop Insurance Commission	1				1
Ontario Apple Producers' Marketing Board	2	1			3
Ontario Egg Producers' Marketing Board	2			1	3
Ontario Flue-Cured Tobacco Grower's Board		10			10
Ontario Junior Farmer Establishment Loan Corp.	2	1			3
Ontario Milk Marketing Board		6			6
Attorney General	8	26	1	1	36
Criminal Injuries Compensation Board	10	1		2	13
Ontario Municipal Board	4	15		1	20
Colleges and Universities	16	9		2	27
Colleges of Applied Arts and Technology	4	3			7
Community and Social Services	22	64	2	24	112
Centres for Developmentally Handicapped	4	2			6
Schools	3	1			4
Total 120					
Consumer & Commercial Relations	36	25	4	4	69
Commercial Registration Appeal Tribunal			1		1
Liquor Control Board	1	1	2		4
Ontario Racing Commission		1			1
Ontario Securities Commission		1			1
Pension Commission of Ontario	1	1			2
Residential Premises Rent Review Board	25	11	1	2	39

COMPLAINTS BY ORGANIZATION					
	Within Jurisdiction	Outside Jurisdiction	Not Determined	Information Requests/ Submissions	Total
Correctional Services	25	11		7	43
Correctional Centres	184	20		23	227
Detention Centres	34	1			35
Jails	172	6		5	183
Total 488					
Ontario Board of Parole	5	2		3	10
Culture and Recreation	3	1			4
Ontario Educational Communications Authority	1	1			2
Ontario Lottery Corporation	1				1
Province of Ontario Council for the Arts		1			1
Education	6	24	1	2	33
Teacher's Superannuation Commission	2	1			3
Energy	1			1	2
Ontario Energy Board	1	1			2
Ontario Hydro	11	7	1		19
Environment	11	8		1	20
Government Services	9	6			15
Public Service Superannuation Board		1		1	1
Health	31	12	1	3	47
Psychiatric Hospitals	57	19		11	88
OHIP	11	13	1	10	35
Total 170					
Alcoholism and Drug Addiction Research Foundation	2	1			3

COMPLAINTS BY ORGANIZATION

	Within Jurisdiction	Outside Jurisdiction	Not Determined	Information Requests/ Submissions	Total
Health Disciplines Board	3				3
Review Board for Psychiatric Facilities	1				1
Housing	17	18	3	3	41
Ontario Housing Corporation	19	26	3	8	56
Industry and Tourism	2	1	1	2	5
Northern Ontario Development Corporation	2				3
Ontario Development Corporation	1				1
Labour	20	11	1	5	37
Ontario Human Rights Commission	3	1		2	6
Ontario Labour Relations Board	1	1		1	3
Workmen's Compensation Board	137	224		25	386
Natural Resources	30	26		6	62
Revenue	34	18	1	4	57
Solicitor General		2			2
Ontario Police Commission	5	33		1	5
Ontario Provincial Police					34
Transportation and Communications	44	37	1	7	89
Ontario Highway Transport Board		2			2
Ontario Northland Transportation Commission	1			1	2
Treasury, Economics and Intergovernmental Affairs	2	2	1	1	6
Total	1033	719	27	171	1950

COMPLAINTS BY ORGANIZATION

	Within Jurisdiction	Outside Jurisdiction	Not Determined	Information Requests/ Submissions	Total
<u>Government of Ontario Other</u>					
Management Board		1		1	2
Civil Service Commission	2	1			3
Public Service Grievance Board	2	2			4
Office of the Premier/Cabinet Office		3			3
Assembly					
Provincial Secretariat for Resources Development	1	4		1	6
Niagara Escarpment Commission		1			1
Provincial Secretariat for Social Development	1	1		7	9
Ontario Advisory Council on Senior Citizens		2			2
Office of the Ombudsman			4		4
Executive Council					
Other					
Total	6	15	4	9	34
Government of Ontario Total	1039	734	31	180	1984
Courts					
Total		170		1	171
<u>FEDERAL GOVERNMENT DEPARTMENTS/AGENCIES</u>					
Canadian Penitentiary Services		11			11
Central Mortgage and Housing		6			6
Consumer and Corporate Affairs		2			2
Office of the Correctional Investigator		1		5	6
Health and Welfare		14			14
Indian Affairs and Northern Development		8			8
Justice		1			1
Manpower and Immigration		20			20

COMPLAINTS BY ORGANIZATION

	Within Jurisdiction	Outside Jurisdiction	Not Determined	Information Requests/ Submissions	Total
National Parole Board	13			1	14
Post Office	12				12
Public Works	1				1
Revenue Canada - Taxation	23				23
Royal Canadian Mounted Police	11				11
Transport	6				6
Unemployment Insurance Commission	72			1	72
Veteran Affairs	12			1	13
Federal Government - Other	24				25
Total	237			8	245
PRIVATE					
Associations/Groups		50		2	52
Children's Aid Society		15		1	16
Doctors - Patients		13			13
Hospitals		14			14
Lawyers - Clients		101			101
Law Society of Upper Canada		20			20
College of Physicians and Surgeons		2			2
Other - Private		91		8	99
Private Business		371		2	373
Private Individual		113		3	116
Universities - Private		8			8
Member of Parliament		1			1
Total		799		16	815

COMPLAINTS BY ORGANIZATION					
	Within Jurisdiction	Outside Jurisdiction	Not Determined	Information Requests/ Submissions	Total
<u>MUNICIPALITIES/LOCAL AUTHORITIES</u>					
Municipalities		217		5	222
Municipal Police		80		4	84
Total		397		9	406
<u>INTERNATIONAL</u>					
Total		5			5
<u>OTHER PROVINCES</u>					
Total		15		1	16
<u>NO ORGANIZATION SPECIFIED</u>					
Total		12	10	3	25
OVERALL TOTAL	1039	2369	41	218	3667*

* This figure exceeds the total number of closed complaints (3652) because some complaints involve more than one organization.

CHAPTER TWO

CHAPTER TWO

THE CANADIAN CONFERENCE OF LEGISLATIVE OMBUDSMEN - 1977

The Ontario Ombudsman's Office was honoured to host the Canadian Conference of Legislative Ombudsmen - 1977, which took place in Toronto from September 12th to September 16th. This exciting event was the culmination of almost one year of planning and preparation, beginning with the invitation extended by me and approved by the Government in the Autumn of 1976.

Immediately upon my return from the International Conference, I constituted a committee to assist me in planning the Canadian Conference of Legislative Ombudsmen as follows:

Brian Goodman (Chairman)
Director of Investigations

Ken Cavanagh
Director of Communications

Glenn Hainey
Executive Assistant to the Office of the
Ombudsman

W. Niels Ortved
Special Consultant to the Ombudsman.

After meeting with the Directors of my Office and consulting with various Canadian Legislative Ombudsmen and their assistants, the Committee and I collaborated to devise a theme and program which we hoped would meet the following three criteria: first, that the conference be a learning experience for the Ombudsmen and their assistants and that the topics to be discussed provide a fresh understanding of our function; second, that there be representation and participation from all parts of Canada, and especially from those jurisdictions with a Legislative Ombudsman Office; third, that as hosts, the staff of the Ontario Ombudsman's Office meet as many of their colleagues in the other Canadian offices as possible and take part in as much of the Conference as their schedules would permit.

The theme of the Conference was "The Ombudsman Plan ... an Extension of Democracy?". At the formal sessions of the Conference, expert panels consisting in the main of non-Ombudsman personnel considered the six principal relationships and functions of the Ombudsman as follows:

"The Ombudsman - the Person or the Function?"

"The Ombudsman and Access to Information"

"The Ombudsman and the Legislature"

"The Ombudsman and the Media"

"The Ombudsman and the Civil Service"

"The Ombudsman as Investigator".

It will be appreciated that the various topics considered fit rather nicely under the umbrella theme. Following an opening presentation by each of the panelists, including the panel chairmen, the topic was opened to questions and comments from the delegates and observers. This proved to be an interesting format.

I am pleased to report that we were able to attract delegates and participants from every jurisdiction in Canada which has an ombudsman system. The Conference was attended by all Canadian legislative Ombudsmen with the exception of David Tickell, Ombudsman for Saskatchewan, who unfortunately was required at the last moment to cancel his plans to attend. The Saskatchewan office was, however, ably represented by Messrs. Kenn Barker and Gordon Mayer. The French speaking participants were invited to deliver their remarks in French, and copies of the translations of their presentations were made available to English speaking delegates, participants and observers. Delegates and participants from the Province of Quebec took part in five of the six panels. In addition, many of the English speaking panelists and other participants delivered at least a portion of their remarks in the French language.

On Sunday, September 11th, a very worthwhile meeting of assistants to Ombudsmen was held at our offices. Items discussed included the role to be played by assistants, and such matters as jurisdiction, reporting procedures and communication between Provincial Ombudsman Offices.

The Conference was officially brought to order by me on the morning of Monday, September 12th. His Eminence George Bernard Cardinal Flahiff, C.S.B., D.D., the Archbishop of Winnipeg, delivered the Divine Invocation in both the English and French languages. In the remarks preceding the Invocation, His Eminence admonished the Ombudsmen of Canada to be "experts in humanity". He also said:

"The Ombudsman is unquestionably regarded as the champion of the little fellow. The greatest innovative feature of the Ombudsman's office is surely that it provides an effective recourse for those who otherwise because of their inexperience or their limited resources or their inauspicious status

might be trampled by an established bureaucracy which is certainly not evil but which is necessarily as unequipped to deal with the unpredictable human deviations as is the computer to interpret the faintest emotional overtone of its input. From this creative opportunity of being the spokesman for those who cannot adequately speak for themselves, there follows a capital challenge an Ombudsman faces.

"Certainly the Ombudsman must be technically and professionally competent and must shine for fairness and even-handed dealing whenever it is necessary to correct or to supplement the provisions of law or their administration. It seems to me nevertheless that the very highest and the most mandatory qualification is to be, besides all this, profoundly interested in and committed to the humanness of the human individual.

"..... The Ombudsman to my mind must be able to say, and adequate provision must be made for the Ombudsman to say effectively, with the Ancient Roman leader - I am a human being and nothing human is foreign to me."

Dr. Stuart Smith, M.P.P., Leader of the Opposition, Province of Ontario, extended an official welcome on behalf of all of the Members of the Legislature of Ontario to the Conference participants.

Roderick Lewis, Q.C., Clerk of the Legislative Assembly, Province of Ontario, introduced our keynote speaker, Sir Barnett Cocks, K.C.B., O.B.E., former Clerk of the House of Commons Westminster, London, England. Sir Barnett's remarks were entitled "An Acceptance of Individuality", and the following brief excerpt will give you some idea of the thought-provoking and stimulating manner by which he treated the subject.

"When a new institution is established there is, after the initial welcome, an underlying fear in many hearts, or at least in the more timorous among us. There is a feeling that its success may be conceded up to a point - and approved of. But supposing its success goes beyond that point? Then the timorous soul begins to feel insecure. What have we done? Has the Ombudsman taken too much on his shoulders? Weren't things happier before he undertook this mighty task of dealing with the

grievances of eight million citizens? There is a standard criticism about most new foundations which is rooted in the feeling of insecurity of those who voice the criticism: 'Too big and impersonal - it may overwhelm us all.' Yet when we analyse the objection there is no reason why a large establishment should cease to be personal and inevitably become impersonal as it grows. The universities, the armed forces, the churches and even Parliament itself are all large but remain institutions where the individual counts."

A discussion of the keynote address was led by Prof. Donald C. Rowat, Department of Political Science, Carleton University, Ottawa. Prof. Rowat is a well known author on the subject of ombudsmanship.

On the afternoon of Monday, September 12th, the following Conference participants considered the subject of "The Ombudsman - the Person or the Function?":

<u>Panel Chairman:</u>	Dr. Bernard Frank, Chairman Ombudsman Committee International Bar Association Allentown, Pennsylvania, U.S.A.
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<u>Panelists</u> (in order of presentation):	Dr. Harry D. Smith Ombudsman of Nova Scotia
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Dr. Luce Patenaude, Q.C.
Le Protecteur du Citoyen
Province of Quebec

Alex B. Weir
Solicitor to the
Ombudsman of Alberta

Brian P. Goodman
Director of Investigations
Ombudsman of Ontario.

The panelists addressed themselves to the relative importance of the personality of the Ombudsman as compared to the functions which the Ombudsman and his or her assistants perform - especially in a large jurisdiction.

Dr. Luce Patenaude, Q.C., le Protecteur du Citoyen for the Province of Quebec, expressed her thoughts on the subject as follows:

"In my opinion, the citizen views the Ombudsman, above all, as the INSTITUTION. It is only under exceptional circumstances that the citizen will refer to the person - for example, at the time of the Ombudsman's appointment because the attendant publicity had placed him in the limelight, through an "accident of nature", and so on and so on. This, at least is the case with the citizens of Quebec. ...

"One could argue that the Ombudsman as a person interests those citizens who expect to be greeted by the Ombudsman himself when they come to his office or call him. But here again, this expectation, to my mind, has nothing to do with the personality of the person holding the title, but rather, it relates unconsciously to the fact that the Ombudsman symbolises the authority and represents the INSTITUTION. What the complainant wants is not so much to see the Ombudsman in the flesh, but to see his case studied by him. So it suffices to explain to the complainant that his chances of succeeding are not all lost due to the Ombudsman's absence.

"The importance of the Ombudsman as a person is not so much conveyed through his direct contacts with citizens, but rather through the functioning of the INSTITUTION."

The year 1977 saw the retirement from office of Sir Guy Powles, Chief Ombudsman for New Zealand, and the first Legislative Ombudsman in the British Commonwealth. At the conclusion of the Monday afternoon session, I introduced the following resolution which was subsequently signed by all the Canadian Legislative Ombudsmen or their representatives:

BE IT RESOLVED:

WHEREAS Sir Guy Powles was Ombudsman for New Zealand from October 31, 1962 to April 5, 1977;

AND WHEREAS Sir Guy so distinguished himself and the Ombudsman institution that his colleagues affectionately referred to him as Dean of Ombudsmen;

BE IT THEREFORE RESOLVED that the delegates to the 1977 Canadian Conference of Legislative Ombudsmen express their sincere gratitude to Sir Guy for the immense contribution he has made to ombudsmanship around the world.

The signed resolution inscribed on parchment paper was later sent to Sir Guy.

On the morning of Tuesday, September 13th, the topic for consideration by the Conference was "The Ombudsman and Access to Information". The following panelists addressed themselves to such matters as the desirability for freedom of information legislation both on a national and provincial level, and the effect, if any, that this would have on the operation of the office of ombudsman.

Panel Chairman: The Honourable John N. Turner, P.C., Q.C.
Toronto, Ontario

Panelists: Gerald W. Baldwin, Q.C., M.P.
Peace River
Province of Alberta

Donald C. MacDonald, M.P.P.
York South
Province of Ontario

Margaret Campbell, M.P.P.
St. George
Province of Ontario.

In this regard, The Honourable John N. Turner, P.C., Q.C., made the following comments:

"I feel that the role of the Ombudsman, having a problem focus, could be made more effective for its expertise and familiarity with the intricacies of the bureaucracy unknown to the average citizen, if more of the legislative and regulatory process were open under a freedom of information statute.

"But the exercise of the Ombudsman's function - solving problems for citizens - is no substitute for freedom of information. Freedom of information depends essentially on a citizen's being able to approach his government and find out what a statute says or what a regulation says. It does not necessarily involve administrative assistance. A citizen should be able to ask for the information with no intervening Ombudsman, no intervening Member of Parliament, although the Ombudsman of course could be of assistance. What I'm saying is that freedom of information implies that open government is an end in itself, and should be independent from the Ombudsman's function."

It was unfortunate that the Honourable Garde B. Gardom, Q.C., M.L.A., Attorney General for the Province of British Columbia, was required, at the last moment, to cancel his participation on the

above panel. However, both Mr. Richard H. Vogel, Deputy Attorney General, and Mr. Geoff Hutt of that Ministry, were able to attend the Conference as observers. I am extremely grateful to Margaret Campbell, Q.C., M.P.P., for agreeing, on very short notice, to take Mr. Gardom's place on the panel.

Immediately following lunch on September 13th and prior to the commencement of the afternoon proceedings, Mr. Joseph Berubé, the Ombudsman for New Brunswick, at my invitation, delivered a brief report on his investigation of a complaint against a member of the Fredericton Police Force. The case study was an interesting example of a complaint against municipal government, New Brunswick and Nova Scotia being the only two provinces where the Legislature has granted such authority to the Ombudsman.

At the Tuesday afternoon's session, the topic for discussion was "The Ombudsman and the Legislature", including the role of the Ombudsman vis-a-vis the elected member of the Legislature and the desirability of a jurisdiction having a Select Committee on the Ombudsman. The panelists were:

Panel Chairman: Sir Barnett Cocks, K.C.B., O.B.E.
Former Clerk of the House of
Commons Westminster, London, England

Panelists: The Honourable Mr. Justice C.W. Clement
Supreme Court Appeal Division
Province of Alberta

Stephen H. Lewis, M.P.P.
Leader of the New Democratic Party
Province of Ontario

Gerard D. Levesque, M.N.A.
Leader of the Opposition
Province of Quebec

Norman Webster
Legislative Journalist
Globe and Mail, Toronto

One of the panelists, Gerard D. Levesque, made the following observations:

"In Quebec, the Members of the National Assembly have never regarded the Ombudsman as being an institution which would limit their responsibilities towards their constituents. On the contrary, a number of members who, after having repeatedly appealed to a department concerning a problem on behalf of a constituent, have, on their own initiative, referred the case to the Ombudsman. This is a current

practice and altogether normal. Citizens who have a problem will quite naturally address themselves to their Member and I fail to see why he would deprive himself of the Ombudsman's services to help him rectify the legitimate complaints of his constituents ...

"We could perhaps consider improving the cooperation between the Members and the Ombudsman. I do not believe, however, that it would be desirable to involve the Members in any way whatsoever in the complaints which are submitted to the Ombudsman and, even less, in the exercise of the powers of investigation and the recommendations which are delegated to him.

"The Ombudsman Institution has a significance which is proper to it and one should respect the principle of the Independence of the Public Protector."

On the afternoon of Wednesday, September 14th, a Conference business session was held, chaired by Mr. Kenn Barker, Assistant Ombudsman for Saskatchewan. Dr. Randall E. Ivany, Ombudsman of Alberta, delivered a report on the International Ombudsman Steering Committee meetings held in Paris, France from May 9th through May 12th, 1977. The Steering Committee was established at the business session of the First International Ombudsman Conference held in Edmonton, Alberta, from September 6th to 10th, 1976. Those persons comprising the Steering Committee were named as follows:

Southern Region

Mr. Justice Moti Tikaram (Fiji)
Mr. Oliver Dixon (Western Australia)
Judge Frederick Chomba (Zambia)

European Region

Mr. Nordskov Nielsen (Denmark)
M. Aime Paquet (France)
Frau Lieselotte Berger (Germany)

North American Region

Dr. Randall Ivany (Alberta, Canada,
Chairman)
Mr. Arthur Maloney, Q.C. (Ontario, Canada)
Mr. Frank Flavin (Alaska, U.S.A.)

Dr. Ivany reported that it was agreed by the Steering Committee that Jerusalem would be the site of the next International Ombudsman Conference, which will likely be held in the Autumn of 1980, and that the theme of the Conference would be

"The Ombudsman as Mediator, Fighter and Reformer".

It was also agreed at the Edmonton Conference that the Steering Committee be responsible for considering the question of establishing an "Ombudsman Institute" whose functions might include cataloguing and storing information on the ombudsman experience in philosophy, methods and results, creating central archives of material for research, and establishing information centres for interested governments and observers. Dr. Ivany reported that, with regard to the Ombudsman Institute, the Steering Committee meeting in Paris endorsed the proposal from the University of Alberta at Edmonton and further indicated that it would invite and welcome the establishment of a parallel institution in Sweden, in due time. Additionally, he related that the Committee would be pleased to receive and to consider in due time proposals designed especially to meet the needs of the Third World in this field. Dr. Ivany further reported that at the Paris meeting Dr. I.E. Nebenzahl, State Comptroller and Commissioner for Complaints from the Public for Israel, as the host of the next international conference, was appointed Vice-Chairman of the International Ombudsman Steering Committee.

Prof. Peter Freeman of the Faculty of Law, University of Alberta, delivered a brief report on the establishment, organization and purposes of the International Ombudsman Institute, whose objects are the following:

- (1) to promote the concept of ombudsman and to encourage its development throughout the world;
- (2) to encourage and support research and study into the office of ombudsman;
- (3) to develop and operate educational programs for ombudsmen and other interested people;
- (4) to collect, store and distribute information and research about the institution of the ombudsman;
- (5) to develop and operate programs enabling an exchange of information and experience between ombudsmen throughout the world;
- (6) to provide scholarships, fellowships, grants and exchange privileges to individuals throughout the world to encourage the development, study and research into the institution of the ombudsman;
- (7) such other matters that are necessary to fill the above objectives.

At this point I should report that we have recently received word that Sir Guy Powles, formerly Chief Ombudsman for New Zealand, will be officially attached to the Institute as "Ombudsman in Residence" between May and November of 1978. We are all very excited about this development.

The next item discussed by the delegates at the business session was the location of the 1978 National Conference. Mr. George W. Maltby, the Ombudsman of Manitoba, tentatively invited the Conference delegates to Winnipeg in 1978. It was moved and carried that a Steering Committee of 3 delegates be appointed by Mr. Maltby to assist him in his aspiration to be host, to give any further assistance to him that he might ask of them in the event his invitation could be carried through, and to determine the site of the next National Conference in the event Manitoba was not available. It was agreed that the Steering Committee, among its other responsibilities, should decide after consultation, what would be the most appropriate time period and date for the Conference.

It was further agreed that Dr. Ivany would meet with Mr. Frank Flavin, the Ombudsman of Alaska, with a view to exploring the possibility of the establishment of a North-American Ombudsman Association and a North-American Ombudsman Conference before the second international one.

Dr. Bernard Frank, Chairman of the Ombudsman Committee of the International Bar Association presented a report on the recent activities and plans of that Committee. Finally, it was agreed that the following resolution, moved by Mr. Joseph Berubé, the Ombudsman of New Brunswick, be referred to the Steering Committee for the next national conference, which Committee is to report back to the delegates at the next national conference with recommendations:

that a Canadian Legislative Ombudsman and/or Counsel, preparatory to any judicial review of his or her legislation, be encouraged to consult with his or her colleagues with a view to ensuring that the fullest possible hearing is accorded in such a review.

I am pleased to report that it has been confirmed that the national conference for 1978 will be held in Winnipeg, Manitoba.

Since it was not possible to complete the conference business at the session on Wednesday afternoon, it was agreed to continue our discussion following the Friday luncheon.

On the morning of Thursday, September 15th, the following panelists considered the question of "The Ombudsman and the Media":

Panel Chairman: Ken Cavanagh
Director of Communications
Ombudsman of Ontario

Panelists: Claude Ryan, Publisher
Le Devoir, Montreal

The Honourable Judy LaMarsh, P.C., Q.C.
Toronto, Ontario

Cameron Smith
Assistant to the Editor
The Globe & Mail, Toronto

Robert Cooper
CBC Television Ombudsman
Toronto, Ontario

Borden Spears
Senior Editor and
Editorial Ombudsman
The Toronto Star. Toronto.

The panelists and the conference participants discussed such issues as the relationship between the Legislative Ombudsman and the Media, and the need for an Ombudsman for the Media.

The Honourable Judy LaMarsh, P.C., Q.C., set forth the reasons why she thought the establishment of the Office of Media Ombudsman was essential, and said the following about the objects of such an Office:

"The purpose of a media ombudsman would be twofold really. One is to protect the media from incursions by government and that may or may not be terribly important in the future of Canada. And the other one of course is similar to the statutory ombudsman which is to protect the individual from the power of the media. We know that there are considerable problems in trying to set up a national media ombudsman because most of the press is dealt with on a provincial basis. If there were a provincial ombudsman it perhaps would be much more responsible to the public ..."

Other panelists, such as Cameron Smith, Assistant to the Editor of the Globe and Mail, spoke against the concept of an Ombudsman for the media:

"I say let there be laws limiting the press. There are such laws now - laws of libel, laws of obscenity, laws against divulging official secrets, laws affecting defence, treason, sedition, laws against counselling a crime, laws concerning contempt of court, laws governing what parts of trial can be reported - a whole raft of laws. Now if those laws are not stringent enough, if they don't offer the public enough protection, tighten them. But for God's sake, let it be the law that rules and not some state agent."

Following the Thursday luncheon, Dr. Ivany made some interesting observations concerning his report on the Calgary Remand and Detention Centre.

At the Thursday afternoon session, the Conference considered the relationship between and the attitudes of "The Ombudsman and the Civil Service". The panelists were:

Panel Chairman: Art J. Herridge
Assistant Deputy Minister of
Natural Resources
Province of Ontario

Panelists: Robert Normand
Deputy Minister of Inter-
governmental Affairs
Province of Quebec

James E. Dixon
Public Service Commissioner
Province of Alberta

Glenn R. Thompson
Deputy Minister of Correctional
Services
Province of Ontario

W. Niels Ortved
Special Consultant to
Ombudsman of Ontario.

I am grateful to Mr. Art J. Herridge, Assistant Deputy Minister, Resources and Recreation, Ministry of Natural Resources, who chaired the above panel in the place of Dr. J. Keith Reynolds, Deputy Minister of that Ministry, who was unfortunately unable to attend due to illness.

On the subject of the Ombudsman and the Civil Service, Mr. Ortved said, in part:

"Still dealing with the conceptual aspect of this relationship, I would next like to turn to a consideration of the Ombudsman's office from the point of view of the Civil Service. How should it be regarded? It is fundamental that both the Ombudsman's office and the Civil Service are apolitical and impartial in nature. Each is staffed by those dedicated to the service of the public within the confines of the established policies and programmes of the Legislature, and neither has any ulterior political axe to grind. Bearing in mind my earlier comments about mistakes necessarily occurring from time to time, it is suggested that those occasions on which the Ombudsman's ex post facto review enables such mistakes to be brought to the attention of the Civil Service should be viewed as simply the operation of another institutional check to guard against error and as such very sincerely welcomed by the Civil Service and is in no way viewed as a threat to its authority."

The final conference session was held on the morning of Friday, September 16th, at which time the following panelists considered the principal role of the Ombudsman, namely "The Ombudsman as Investigator":

Panel Chairman: His Honour Chief Judge Ernest
C. Boychuk, Q.C.
Province of Saskatchewan

Panelists: Gordon Earle
Deputy Ombudsman
Province of Nova Scotia

Charles Ferris
Solicitor to the Ombudsman
Province of New Brunswick

M. Jean-Marc Ducharme
Assistant du Protecteur du Citoyen
Province of Quebec

Eric Moody
Assistant Director of Investigations
Ombudsman of Ontario

Each panelist, including the chairman, gave one or two case studies, concentrating on the techniques of investigation used in each case.

At the continuation of the business session completed following the Friday luncheon, the following resolution was presented and carried:

WHEREAS the ombudsman concept continues to expand throughout the world;

AND WHEREAS 1977 marks the tenth anniversary of the introduction of the concept in Canada;

AND WHEREAS all citizens of Canada should have access to an Ombudsman to deal with grievances against governmental authorities;

THEREFORE be it resolved that the Canadian National Ombudsman Conference welcomes the establishment of the Office of an Ombudsman in British Columbia by the British Columbia Legislative Assembly and encourages debate and discussion within the Legislatures and Parliaments of Canada of proposals that would extend the ombudsman concept to all citizens of Canada for all levels of government.

In addition it was moved and carried that the Conference agree in principle to the idea of a staff exchange program and that the setting up of a pilot project be commenced.

I should mention at this point that the entire proceedings of the Conference were taped and have now been transcribed. We are in the process of determining the most appropriate format and method of distribution of the transcript.

Space does not permit me to acknowledge my gratitude to all those who contributed to the success of the Conference. Permit me, however, to make a few observations and extend some very special notes of appreciation.

I am especially pleased that Mr. Frank Flavin, the Ombudsman for the State of Alaska, and Mr. Ken Bratton, a member of the staff of the Commissioner for Local Administration in Edinburgh, Scotland, were able to attend our Conference as observers.

I would like to thank the Members of the Select Committee of the Legislature of Ontario on the Ombudsman for the tour and reception hosted by them and for the interest that they showed in the entire Conference proceedings, where they were represented throughout. There was not a conference event at which the Committee was not represented.

Acknowledgment is also gratefully given to Her Honour the Lieutenant-Governor of Ontario, The Honourable Pauline M. McGibbon, for the hospitality extended to our guests.

I would like to thank The Honourable William G. Davis, Q.C., Premier of Ontario, for the thought-provoking remarks which he delivered on the subject of national unity following the reception and dinner hosted by me. I wish also to thank him for the magnificent dinner hosted by the Government on Tuesday, September 13th at Ontario Place.

I wish to acknowledge with appreciation the official welcome extended by Dr. Stuart Smith, M.P.P., Leader of the Opposition, on behalf of all the Members of the Legislature of Ontario to the Conference participants, and the contribution made by Stephen H. Lewis, M.P.P., Leader of the New Democratic Party, to the panel on "The Ombudsman and the Legislature".

A special thanks to Roderick Lewis, Q.C., Clerk of the Legislative Assembly, for introducing the keynote speaker, and to all the distinguished Clergymen of many faiths who officiated at our proceedings.

I would like to express my appreciation to the Corporation of the Municipality of Metropolitan Toronto and Paul V. Godfrey, Chairman of the Council, for hosting the Monday luncheon.

I wish to acknowledge the assistance provided us by Mr. Walter A. Borosa, Director of Protocol, Protocol Services Branch, Ministry of Government Services, and by the employees of that Branch. Thanks are due also to the O.P.P. for assisting us with our security arrangements and to the local, regional and national media for the extensive coverage which the Conference received. I am grateful to the members of the academic community for their interest and participation in the Conference.

The Conference provided an opportunity to meet old friends and make new ones and to examine and re-appraise the ombudsman institution in Canada - where it's been, where it is and where it is likely to go. I am confident that all who participated in the Conference benefited from it and have indeed gained a fresh understanding of the Office of the Legislative Ombudsman.

CHAPTER THREE

COMPREHENSIVE STATISTICAL
SUMMARY

APRIL 1, 1977 TO
SEPTEMBER 30, 1977

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The previous two reports to the Legislature included comprehensive statistical summaries, which, when taken together, cover the period from May 1975 to March 31, 1977. This Third Report provides a comprehensive statistical summary for the period from April 1, 1977 to September 30, 1977.

In addition, for the first time, this statistics chapter contains a section headed "IN PROGRESS COMPLAINT FILES". This section summarizes the duration and status of all complaints that were in progress at the end of the period covered by this report. As in the case of the Second Report, this statistics chapter also provides a description of the information systems capabilities which have been developed to further meet the needs of the Office of the Ombudsman.

DESCRIPTION OF THE SYSTEM

The basic design of the information system has not changed from that which was described in the Second Report of the Ombudsman. The service provided by the system continues to be directed to three objectives, namely:

(i) Communications objective:

- to provide the information required to communicate and report upon the activities of the Office of the Ombudsman to the Legislative Assembly, the appointed officials of government, and the public.

(ii) Research objective:

- to provide information required to conduct research which facilitates complaint inquiries and investigations.

(iii) Management objective:

- to provide the information required by our senior staff to facilitate internal reporting and decision-making responsibilities.

The major categories of information which are being collected within the system serve all three objectives. TABLE ONE outlines the basic elements of our information system from the opening of the complaint file through to the stage where reports are issued. The following paragraphs provide a brief description of the information gathering processes.

Complaints are received by the Office of the Ombudsman either by letter or by means of an interview with the complainant. A new file is opened for each complainant who has not previously brought a problem to our attention. A complaint summary form as shown in TABLE TWO is included in each new file. The next step is to prepare an alphabetical index card for each complainant's name and at the same time produce the daily report on new complaints. Thereafter, the new files and the corresponding daily reports are forwarded to the appropriate Directorates. In addition, the pattern of complaint reception is summarized and communicated to senior staff in the form of a monthly records statistics report. For telephone inquiries which do not warrant the opening of a file, a written record is retained on our telephone logs.

Upon receipt of the complaint file in a Directorate, the complaint file is assigned to an investigator, researcher or legal officer for appropriate action. When work on the complaint has been completed the file is sent to the Records Office for closing. All files submitted for closing must contain a fully completed complaint summary form and copies of either a closing memorandum or a closing letter. A detailed closing memorandum is required for all complaints where there has been substantial work by the Ombudsman's staff.

For the purpose of input to the computer, information is extracted from the complaint summary form, the closing memorandum or the closing letter. The information extracted from these documents is used to prepare the capsule case summaries found in Volume Two of this Report. Also, these documents provide the statistical information which is tabulated on the complaint disposition form shown in TABLE THREE. It should be stressed that the information collection processes incorporate an operational monitoring function. For example, when a closing memorandum is not clear with respect to any of the determinations shown by the complaint disposition form the file is returned to the appropriate Directorate and staff member for clarification. In some of these cases it is necessary to redraft portions of the closing memorandum in order that the file is accurately summarized. This information is then fed into the computer and verified. Thereafter, on a regular basis communications, management and research oriented reports are prepared. In addition to these regular reports, there are also specially requested reports which are designed to meet the specific requirements of staff members. For example, a staff member can be provided with a computer printout which shows the types of complaints that have been received from a given area of the Province.

As explained in the Second Report the "communications objective" is an acknowledgement of an obligation to provide information of sufficient scope and detail to open a window on the workings of the Office of the Ombudsman. Thus, reports to

the Legislature of Ontario must contain information which facilitates the evaluation of the performance of the Office against general standards. In order to meet this objective the capsule case summaries in Volume Two show the organizational, jurisdictional, complaint substance and complaint results determinations for all closed complaints. The statistical summary provides a numerical representation of the information in Volume Two. In addition, the statistical summary contains information relating to the geographical origin, the number of contacts, the final action, the complaint assignments to Directorates and the average duration to closing for all closed complaints.

It is equally important that the Office of the Ombudsman have the capability to monitor its own performance on an ongoing basis. The management reports serve this purpose. The information shown in this chapter provides the basis for the management reports. The major difference between the information shown in this chapter and the information contained in the management reports is that, for the latter, much of the information is specific to Directorates. The following is a list of the management report titles and a brief description of the information contained in each report.

1. COMPLAINT FILE ASSIGNMENTS AND COMPLAINT
FILE CLOSINGS BY DIRECTORATE

This report shows the number of files closed by each Directorate as well as the number of files worked on or assigned to each Directorate.

2. COMPLAINT DISPOSITION SUMMARY/CLOSING
DIRECTORATE

This report shows the total disposition figures for all complaints closed by each Directorate. In addition the report shows the average duration to closing for all complaints closed by each Directorate.

3. COMPLAINT DISPOSITION SUMMARY/ASSIGNED
DIRECTORATE

In recognition of the fact that more than one Directorate often works on a particular complaint, this report focuses on the disposition of complaints assigned to each Directorate.

4. COMPLAINT FILES BY ORGANIZATION

This report shows, on an organizational basis, the closing dates, file numbers and total number of files worked on by the Directorate.

5. INVESTIGATORS/INTERVIEWERS BY
FILE CLOSINGS

This report shows, on a Directorate basis, the closing dates, file numbers and total number of files closed by each investigator or interviewer.

6. INVESTIGATORS/INTERVIEWERS BY
FILE ASSIGNMENT

This report shows on a Directorate basis, the closing dates, file numbers and total number of files worked on or assigned to each investigator or interviewer.

In addition to the management reports which focus on closed complaints, a comprehensive report on in progress complaints has been prepared for the Ombudsman and senior staff. This report focuses on complaints that were in progress on September 30, 1977. Hereafter, the report on in progress complaints will be prepared on a regular basis.

The keyword documents are designed to meet the "research objective" by providing information which assists complaint inquiries and investigations. Specifically, the key word documents provide a reference tool which enables an investigator to relate an active complaint to similar complaints that have been investigated and closed in the past. In this respect, the investigator is able to select key words which encompass the complaint substance of a current complaint and thereafter, search the alphabetical key word index and abstracts in order to identify a similar complaint which had been previously closed. The investigative process is thereby made more efficient to the extent that a new investigation can benefit from precedents, both in terms of the Ombudsman's position and the position of the "governmental organization". Also, the key word documents facilitate the assembly of information relating to classes of complaints for major reports.

As explained in the Second Report, the multitude of complaint fact situations reflected in both the detailed case summaries and the capsule case summaries dictates that some determinations, of necessity, require arbitrary decisions on our part in order to classify a complaint. In some cases it is appropriate to categorize the complaint under one organizational heading. However, in other cases it is appropriate to assign the complaint to more than one organization. Similar decisions arise when a complaint involves a multiple allegation situation. In such situations a decision must be made with respect to whether there should be more than one capsule case summary and more than one statistical representation of the complaint.

For this Third Report there are several changes in the form of expression used in this chapter and the separate volume of capsule case summaries. In both this chapter and the capsule case summaries, information requests and information submissions have been segregated from the balance of complaints. In the capsule case summaries they are shown under the separate heading "INFORMATION REQUESTS/SUBMISSIONS". In this chapter they are specifically identified in terms of their status with respect to both jurisdictional and final action considerations.

In order to minimize the ambiguities which arise through the use of the word "recommendation", the final action category "informal recommendation" has been changed to "suggestion". Also, since the word "recommendation" is now only used in the sense of a formal recommendation pursuant to Section 22(3) of The Ombudsman Act, 1975, this action category heading has been changed from "formal recommendation" to "recommendation".

These changes have not affected the language used to express the result for each capsule case summary in Volume Two. The following is a listing of this terminology:

"assisted resolution in favour of governmental organization"

"assisted resolution in favour of complainant"

"independently resolved in favour of complainant"

"recommendation denied"

"inquiry made"

"referred" or "inquiry made/referred"

"advice given" or "explanation given"

"abandoned" or "withdrawn"

"refused to investigate or further investigate"

"no solution identified"

When the capsule case summary reads "inquiry made", this result incorporates either "advice given" or "explanation given". The statistics which follow also use this language.

COMPLAINT RECEPTION

HOW MANY COMPLAINTS WERE RECEIVED?

From April 1, 1977 to September 30, 1977 we received 2985 complaints for which we opened new files. In addition, there

were 270 new complaints which necessitated the re-opening of a complainant's file. Therefore, in total we received 3255 new complaints. In addition the Office received 4200 telephone inquiries for which we did not open a file. Therefore, on an annual basis the Office is receiving over 14,000 citizen inquiries and complaints.

HOW WERE COMPLAINTS RECEIVED?

65% by mail
20% by office interview
15% by hearing interview

The percentage of complaints received through interviews at our private hearings decreased from 20% as stated in the Second Report, to 15% for the period covered by the Third Report. This is likely due to the previously mentioned fact that private hearings were not held during three of the six months covered by this Report.

DID COMPLAINTS COME FROM ALL REGIONS OF THE PROVINCE?

Complaints were received from all regions of the Province. As shown in TABLE FOUR more complaints (517) originated from REGION NINE, ONTARIO NORTH than any other region. As shown in TABLE FIVE, REGION NINE also had the highest complaint-to-population ratio. On the other hand REGION EIGHT, OTTAWA EAST was the source of the fewest number of complaints 191. As noted in the previous two reports the existence of correctional facilities in a particular area and the scheduling of private hearings in a particular area have a significant impact on the number of complaints received from a region. For example, electoral districts with correctional facilities accounted for 43% of all closed complaint files, whereas the population of these districts is only 30% of the provincial population. Similarly electoral districts where private hearings were held accounted for 13% of all closed complaint files whereas the population of these districts is only 6% of the provincial population.

All electoral districts in TABLE FOUR are designated with the letter (R), (U), or (M), depending on whether the preponderance of the polled population resides in a rural or urban setting. Where neither the rural nor the urban population exceeds 66% of the total riding population, the electoral district has been designated as mixed (M). TABLE FOUR shows that there were rural, urban and mixed electoral districts where the number of complaints were either disproportionately high or low in relation to its population. Nevertheless, TABLE SIX shows that the rural, urban or mixed character of electoral districts does not appear to be a significant factor affecting the number of complaints received.

IN PROGRESS COMPLAINT FILES

HOW MANY COMPLAINT FILES WERE IN PROGRESS AT THE END OF THE PERIOD COVERED BY THIS REPORT?

There were 2355 in progress complaint files as of September 30, 1977. This represents a decrease of 196 from the 2551 in progress complaint files at the end of the previous reporting period. TABLE SEVEN shows the number of in progress complaint files as they relate to duration categories dating from the inception of the Office. The majority (59%) of in progress complaint files were opened subsequent to January 1, 1977. Two-thirds of the in progress complaint files which predate this period have been assigned to Directorates and are undergoing substantial investigative or legal research work.

TABLE EIGHT shows the status of all in progress complaints. A total of 1498 of these files are within the jurisdiction of the Ombudsman. This constitutes 64% of all in progress complaint files. A larger number of complaints (1561) are in status categories which reflect substantial involvement and work. This clearly illustrates that, notwithstanding the handling of a large number of non-jurisdictional complaints, the preponderance of staff resources has been assigned to jurisdictional complaints involving substantial investigative and legal research work.

COMPLAINT CLOSINGS

HOW MANY COMPLAINT FILES WERE CLOSED?

There were 3381 complaint files closed during the period from April 1, 1977 to September 30, 1977. This represents an increase to 563 from 557 in the monthly rate of complaint file closings when compared with the previous reporting period. For the first time, the complaint file closings (3381) exceeded complaint file openings (3255). As noted previously, the number of in progress files has decreased by 196.

The disposition analysis of these closed complaint files indicates that there were 271 instances where the complainant's concern involved more than one complaint. As a result, the disposition statistics and the number of capsule case summaries exceed the number of closed files. Also, there were 283 complaint files closed which involved new complaints from citizens whose complaints were included in previous reports to the Legislature.

HOW LONG DOES IT TAKE TO CLOSE A COMPLAINT FILE?

The 3381 files closed during this report period required an average of 99 days to close. Jurisdictional complaint files required an average of 193 days, whereas complaints that were outside the Ombudsman's jurisdiction required an average of 65 days.

Again, the majority (69%) of complaints were closed within a 90 day period. TABLE TEN shows that 1263 complaints were closed within a one month period. The majority of these complaints were non-jurisdictional. For example, TABLE TWELVE shows that during the month of August, there were 95 non-jurisdictional complaints that were opened and closed within that month.

On the other hand, the average duration to closing for jurisdictional complaint files is inflated by the 373 jurisdictional complaint files which required more than nine months to complete. There were many (658) jurisdictional complaint files that were closed within 90 days. However, from time to time there are bound to be instances where the complexity of the complaint requires a lengthy period of investigation. This is illustrated by the 983 in progress complaints shown in TABLE SEVEN which were opened prior to January 1, 1977.

COMPLAINT ASSIGNMENT

*HOW MANY CLOSED COMPLAINT FILES WERE
WORKED ON BY EACH DIRECTORATE?*

Complaint files are assigned to an appropriate Directorate on the basis of factors relating to the Ombudsman's jurisdiction, the organization to which the complaint is directed and the substance of the complaint. TABLE THIRTEEN shows both the number of complaint files worked on by each Directorate and the number of complaint files closed by each Directorate. This table differs from the comparable table in the Second Report as a result of the reorganization of the former Directorate of Institutional and Special Services which resulted in the establishment of the Directorate of Special Services and the Directorate of Correctional and Psychiatric Services.

The Legal Directorate continued to close the largest number (1327) of complaint files. This is a result of this Directorate's responsibility for most of the complaints which are found to be outside the Ombudsman's jurisdiction. The complaint file assignment totals for the Legal Directorate (1761)

and the Directorate of Interview Services (973) are considerably higher than their closed complaint file totals due to the fact that, after an initial review, many of their complaint files are assigned to other Directorates for investigation and subsequent closing.

Finally, the complexity of the complaint necessitated the involvement of more than one Directorate in 25% of the files that were closed. TABLE THIRTEEN also shows the pattern of inter-directorate complaint assignment. For example, the Legal Directorate worked on 169 complaint files that were also worked on by the Investigations Directorate. This pattern is due to the Legal Directorate's responsibility for the preparation of the letter of intent to investigate which precedes the assignment of a complaint to the Directorate of Investigations.

ORGANIZATIONS

WHICH GOVERNMENT AND PRIVATE ORGANIZATIONS WERE INVOLVED WITH THE COMPLAINTS RECEIVED?

TABLE FOURTEEN shows the organizations grouped in eight major categories:

I	Government of Ontario
II	Courts
III	Federal Government
IV	Private
V	Municipalities/Local Authorities
VI	Other Provinces
VII	International
VIII	No Organization Specified

The table also shows the jurisdictional determination for all complaints.

Overall, the percentage of complaints in each of the major categories does not differ significantly from the information shown in the previous two reports. Again, there were more complaints, 1984, or 54%, directed against the ministries, agencies, boards and commissions of the Province of Ontario than all other organizations. The private sector accounted for 815, or 22%, of all complaints. In addition, municipalities

and local authorities accounted for 406 or 11% of all complaints. The Federal Government accounted for 245 or 7% of all complaints.

The Ministry of Correctional Services accounted for 488 or 25% of the Province of Ontario complaints. The Workmen's Compensation Board was involved with 386 or 19% of the Province of Ontario complaints. Overall, 63% of the complaints against the Province of Ontario were directed at ministries; the remaining 37% involved complaints against agencies, boards and commissions of the Province of Ontario.

COMPLAINT DISPOSITION

HOW DID YOU DISPOSE OF COMPLAINTS?

The complaint disposition form shown in TABLE THREE is used for the analysis of all closed complaints. This information is summarized in the following paragraphs under the major headings:

- (i) Jurisdiction
- (ii) Final Action
- (iii) Settlement

All complaint disposition figures are based on an examination of 3652 complaints dealt with during this reporting period. Thus, each capsule case summary in Volume Two has been represented statistically in this chapter.

(i) Jurisdiction

HOW MANY COMPLAINTS WERE WITHIN YOUR JURISDICTION?

There were 1031 (30%) complaints within our jurisdiction as defined by The Ombudsman Act, 1975. Conversely there were 2364, 70%, complaints which were outside our jurisdiction. These figures do not include either the 41 instances where abandonments and withdrawals precluded a jurisdictional determination or the 216 situations involving information requests and information submissions.

WHY WERE COMPLAINTS OUTSIDE YOUR JURISDICTION?

TABLE SIXTEEN shows the number of complaints associated with the various non-jurisdictional categories. These complaints fall into five major groupings.

The first group includes the 338 non-jurisdictional complaints involving municipalities, local authorities and private organizations such as universities which are funded either in whole or in part by the Province of Ontario. Excluding the 84 complaints which pertained to municipal police matters, I have urged that the Ombudsman's jurisdiction should be extended to cover this category of complaint.

The second group includes the 681 premature complaints where the complainants had not exhausted the appeal remedies associated with their problem. These complaints fall into a special non-jurisdictional category in that the complaint would become jurisdictional in the event that the complainant returns to our office having exhausted his or her appeal remedies.

The third group includes the 234 complaints directed at the Federal Government of Canada and the 22 complaints involving other provinces and countries.

The fourth group includes complaints which are not within the Ombudsman's jurisdiction because investigations in these areas would constitute interference with the judicial, legislative or executive functions of government. These include complaints involving the courts (184), a legal advisor to the Crown (17), or the Cabinet (31). Also included in this group are 76 instances relating to Section 15(1) of The Ombudsman Act, 1975, where a "governmental organization" was not involved or where the complainant was not affected in his or her personal capacity.

Finally, the fifth group includes those non-jurisdictional complaints involving private individuals and self-funding private organizations. There were 781 complaints in this category.

(ii) FINAL ACTION

WHAT FINAL ACTION DID YOU TAKE ON COMPLAINTS?

There are nine action categories which define the extent of the action taken by the Ombudsman. These action categories, as set out below, are defined in TABLE TWENTY-THREE.

- (i) "Listen"
- (ii) "Explain"
- (iii) "Advise"
- (iv) "Refer"
- (v) "Inquire/Refer"
- (vi) "Inquire"
- (vii) "Suggest"
- (viii) "Recommendation"
- (ix) "Refuse to Investigate or
Further Investigate"

The definitions associated with the action categories have not changed for this Report. However, as explained previously in the "Systems Description" section of this chapter, the action category headings have changed. The previous "Informal Recommendation" heading has been changed to "Suggest". Similarly, the "Formal Recommendation" heading has been changed to "Recommendation".

The number of complaints in each action category is outlined in TABLE EIGHTEEN. The figures under the heading "All Complaints" include information requests, information submissions and complaints where the jurisdiction was not determined. The "Refer" (1432) and "Inquire/Refer" (762) action categories include a large number of complaints because these actions are associated with the 2364 outside jurisdiction complaints. There were a large number of "Inquire" actions (952), because this action category encompasses all jurisdictional investigations except where a "Suggest" or "Recommendation" action is involved.

In addition, TABLE EIGHTEEN shows the action related assistance provided to complainants. There is no assistance associated with the "Listen" and "Refuse to Investigate or Further Investigate" action categories. On the basis of assistance related action categories, 96% of all complainants received assistance. Assistance was provided in 91% of the jurisdictional complaints and 99% of the non-jurisdictional complaints.

TABLE NINETEEN shows the average duration to closing for each action category. The "Refer" (44 days) and the "Advise" (59 days) action categories had the lowest average duration to closing. This is consistent with our objective of providing a prompt and efficient referral service to complainants with complaints that are not within our jurisdiction. Naturally, "Inquire" (181 days), "Suggest" (343 days) and "Recommendation" (479 days), which are action categories associated with complex jurisdictional complaints had a much longer average duration to closing.

(iii) SETTLEMENT

HOW MANY COMPLAINTS WERE RESOLVED?

TABLE TWENTY shows that 818 (22%) of the 3652 complaints were resolved. Seventy-two percent (590) of these complaints were resolved as a result of the assistance of the Ombudsman. TABLE TWENTY-ONE shows that the majority of complaints where the Ombudsman assisted in the resolution occurred with respect to ministries and agencies of the Province of Ontario.

TABLE TWENTY also shows that a large number of complaints (2834) could not be resolved. With the exception of the few complaints (16) where the Ombudsman decided to "Refuse to Investigate or Further Investigate", the complaints which were not resolved involved factors which precluded a complaint resolution. In 2243 cases, the complaint was outside the jurisdiction of the Ombudsman. In the remaining cases the complaint was abandoned, withdrawn or circumstances changed in the course of the investigation.

*HOW MANY RESOLVED COMPLAINTS WERE SETTLED
IN FAVOUR OF THE COMPLAINANT?*

There were 401 complaints resolved in favour of the complainant. A significant number of these complaints (173) were resolved through the assistance of the Ombudsman. Conversely, there were 228 complaints that were independently resolved in favour of the complainant. Some of these complaints were categorized as independently resolved even though there was involvement on the part of the Ombudsman's staff. However, it was not certain that our involvement was predominantly responsible for the settlement in favour of the complainant.

The 173 complaints which were resolved in favour of the complainant as a result of the Ombudsman's assistance fell into three categories.

(a) There were 148 complaints that were resolved in the course of the investigative process when previously unknown information was brought to the attention of the complainant and the officials of the organization complained against.

(b) There were 10 complaints where, in the course of an investigation, a suggested settlement scheme was found to be acceptable to all parties.

(c) There were 15 complaints where, upon the completion of an investigation, the Ombudsman made a recommendation pursuant to Section 22(3) of The Ombudsman Act, 1975, which was accepted by officials of the "governmental organization".

In addition, there were 5 complaints where the Ombudsman supported the complainant's allegation but the recommendation pursuant to Section 22(3) of The Ombudsman Act, 1975 was not accepted by officials of the "governmental organization".

On the other hand, the 412 complaints which were resolved in favour of the "governmental organization" occurred as a result of the assistance provided by the Ombudsman when a decision was made to support the position of the "governmental organization". Thus, the Ombudsman has assisted in the resolution of these cases to the extent that the settlement result in favour of the "governmental organization" was based on the Ombudsman's finding.

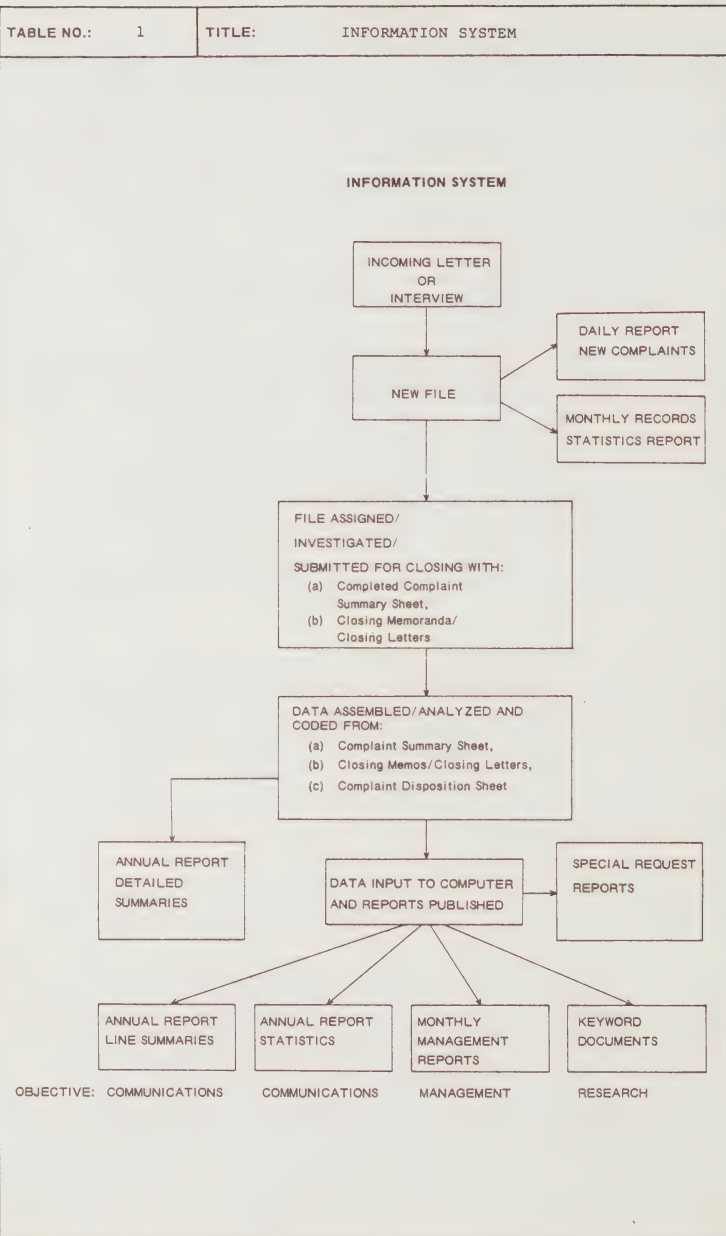


TABLE NO.: 2

TITLE: COMPLAINT SUMMARY FORM



The Ombudsman | Ontario

COMPLAINT SUMMARY

Complainant

Please Print

Surname		Given Names		Home Phone No.	Business Phone No.	Date Complaint Received
Address						
Referral Method						Language Spoken <input type="checkbox"/> English <input type="checkbox"/> French Other (Specify) _____
Knowledge of Office	<input type="checkbox"/> Television <input type="checkbox"/> Radio	<input type="checkbox"/> Newspaper <input type="checkbox"/> Sign/Brochure	<input type="checkbox"/> Relative <input type="checkbox"/> Doctor/Lawyer	<input type="checkbox"/> Friend <input type="checkbox"/> M.P.P. (Specify) _____	<input type="checkbox"/> Organization (Specify) _____	CONSTITUENCY NUMBER
Complaint Initiated/ Reception	Location <input type="checkbox"/> Headquarters <input type="checkbox"/> Legislature <input type="checkbox"/> Hearing <input type="checkbox"/> Visit		Method <input type="checkbox"/> Telephone <input type="checkbox"/> Letter <input type="checkbox"/> In-person <input type="checkbox"/> Other (Specify) _____		Return <input type="checkbox"/> Printed <input type="checkbox"/> Letter <input type="checkbox"/> Relative <input type="checkbox"/> M.P.P. (Specify) _____	

Complaint

Complainant Substantive

Organization's Complaint Agent:

No. of Complaints Received

Assignments

Directorate	Name of Investigator/Informer	From	DATE	To	Estimated Time

Contacts

Notification of Interest to Investigator		Municipality/Agency			
Municipality	Agency	Division/Branch/Institution	Name	Date	

Case Conference <input type="checkbox"/> Yes <input type="checkbox"/> No	Procedural Complaint <input type="checkbox"/> Yes <input type="checkbox"/> No	Third Party Awareness M.P.P. _____ C.B.C. Ombudsman _____ Lawyer _____ Organization _____ Other (Specify) _____
---	--	--

Disposition

Comments

Date

Director's/Assistant Director's Signature

Date

Investigator's/Informer's Signature

File Copy

TABLE NO.: 3

TITLE: COMPLAINT DISPOSITION FORM

COMPLAINT DISPOSITION

Card	File Number	Problem Number	Closing Date D D M M Y Y	Organization Complained Against
1	1 2 3 4 5	7 8	10 11 12 13 14 15	17 18 19 20 21 22 23

Jurisdiction		Findings	
Jurisdiction	Reasons (If Outside)	Findings	Reasons (If Formal Recommendation)
25	26	28	29 30 31 32 33 34 35 36
Within 1	Judges/Court 1	Supported 1	Dec/Act/Rec/Omission 1
Outside 2	Cabinet 2	Not Supported 2	Unjust 1 2 3
Not Determined 3	Federal 3	Not Determined 3	Unreasonable 4 5 6
	Municipal/Local 4		Oppressive 7 8 9
	Private 5		Improperly Discriminatory 10 11 12
	Premature (Sec. 15-4A) 6		Contrary to Law 13
	Other Provinces/Countries 7		Mistake in Law 14
	Legal Advisor or Counsel to Crown 8		Mistake of Fact 15
	S.C.O. Order 9		Discretion Improperly Exercised 16
			Reasons should be given 17
			Wrong 18

Final Action		Type of Formal Recommendation		Formal Recommendation Directed to		Accepted/Denied	
Final Action	Reasons (If Refused)	Type of Formal Recommendation		Formal Recommendation Directed to		Accepted/Denied	
38	39	40 41 42 43		44		45	
Listen 1	Adequate Alternative 1	Further Consideration 1		Minister 1	Accepted 1		
Explain 2	Remedy 2	Needed 2		Agency Head and Minister 2	Denied 2		
Advice 3	Further Investigation 3	Omission should be Rectified 2		Premier 3			
Refuse to Investigate or further Investigate 4	Unnecessary 4	Decision should be Cancelled/Varied 3		Select Committee 4			
Referral 5	Knowledge for more than 12 months 3	Alter Practice 4		Legislature 5			
Inquiry/Referral 6	Trivial 4	Reconsider Law 5					
Inquiry 7	Frivolous 5	Reason should be given 6					
Informal Recommendation 8	Vexatious 6	Other steps to be taken (Specify) 7					
Formal Recommendation (Sec. 22-3) 9	Not in good faith 7						
	Insufficient Personal Interest 8						

Settlement		Result (Resolved Only)		Complainant Satisfaction (if Determined)	
Status	How/Why	Result (Resolved Only)		Complainant Satisfaction (if Determined)	
46	47	48		49	
Resolved 1	Assisted 1	In Favour Complainant 1		Satisfaction 1	
	Independent 2	In Favour Governmental Organization 2		Dissatisfaction Complaint 2	
Not Resolved 2	Abandoned 3				
	Withdrawn 4				
	No Solution Identified 5				
	Circumstances Changed 6				
	Information Request 7				
	Outside Jurisdiction 8				
	Refuse to Investigate or Investigate Further 9				

Card	File Number	Problem Number	Closing Date D D M M Y Y	Organization Complained Against
2	1 2 3 4 5	7 8	10 11 12 13 14 15	17 18 19 20 21 22 23
3				
4				
5				
6				

Prepared By	Key punched by	Verified By
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TABLE NO.: 4 (1)	TITLE: COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT																				
	<p style="text-align: center;"><u>REGION</u></p> <table> <tr> <th data-bbox="243 414 305 433"><u>NUMBER</u></th><th data-bbox="466 414 512 433"><u>NAME</u></th></tr> <tr> <td data-bbox="264 448 274 463">1</td><td data-bbox="466 448 611 463">Toronto-Centre</td></tr> <tr> <td data-bbox="264 473 274 487">2</td><td data-bbox="466 473 621 487">Toronto-Suburbs</td></tr> <tr> <td data-bbox="264 497 274 512">3</td><td data-bbox="466 497 631 512">Golden Horseshoe</td></tr> <tr> <td data-bbox="264 522 274 537">4</td><td data-bbox="466 522 668 537">Ontario West-Central</td></tr> <tr> <td data-bbox="264 547 274 562">5</td><td data-bbox="466 547 668 562">Ontario Western-Ring</td></tr> <tr> <td data-bbox="264 572 274 586">6</td><td data-bbox="466 572 740 586">Toronto North-East Corridor</td></tr> <tr> <td data-bbox="264 596 274 611">7</td><td data-bbox="466 596 678 611">Ontario North-Central</td></tr> <tr> <td data-bbox="264 621 274 636">8</td><td data-bbox="466 621 580 636">Ottawa-East</td></tr> <tr> <td data-bbox="264 646 274 661">9</td><td data-bbox="466 646 600 661">Ontario North</td></tr> </table>	<u>NUMBER</u>	<u>NAME</u>	1	Toronto-Centre	2	Toronto-Suburbs	3	Golden Horseshoe	4	Ontario West-Central	5	Ontario Western-Ring	6	Toronto North-East Corridor	7	Ontario North-Central	8	Ottawa-East	9	Ontario North
<u>NUMBER</u>	<u>NAME</u>																				
1	Toronto-Centre																				
2	Toronto-Suburbs																				
3	Golden Horseshoe																				
4	Ontario West-Central																				
5	Ontario Western-Ring																				
6	Toronto North-East Corridor																				
7	Ontario North-Central																				
8	Ottawa-East																				
9	Ontario North																				
<p>Note:</p>	<p>The designations below apply to the schedules found in this table.</p> <p>(1) An asterisk *- indicates a constituency where a Ministry of Corrections facility is located.</p> <p>(2) The notations (R), (U) or (M) designate the constituency as (R) Rural, (U) Urban or (M) Mixed Urban-Rural. Population figures are based on the number of names on the polling list as taken from Pages 26-29 "1975 Ontario Election Summary From The Records".</p> <p>(3) This table is based on 3250 closed files where a constituency determination could be made.</p>																				

TABLE NO.: 4 (ii)	COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT				
	REGION ONE: TORONTO CENTRE				
TITLE:	CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS
	Beaches-Woodbine	37,974	(U)	6.8	4.7
	Bellwoods	20,127	(U)	3.6	7.5
	Don Mills	49,885	(U)	8.9	7.2
	Dovercourt	22,943	(U)	4.0	6.0
	Eglinton	47,801	(U)	8.6	5.5
	High Park-Swansea	37,484	(U)	6.7	5.0
	Oakwood	31,975	(U)	5.7	2.7
	Parkdale	27,496	(U)	4.8	5.7
	Riverdale	30,811	(U)	5.5	5.5
	Scarborough West	39,456	(U)	7.0	2.2
	St. Andrew-St. Patrick	35,582	(U)	6.3	6.5
	*St. David	39,712	(U)	7.1	16.7
	St. George	43,547	(U)	7.7	17.0
	York East	46,639	(U)	8.3	3.7
	York South	41,107	(U)	7.4	3.5
	T O T A L S	552,539		100.0	100.0
	Percentage of Population	11.2			
	Percentage of Total Closed Complaints		12.2		

TITLE: COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT				
TABLE NO.: 4 (iii)				
REGION TWO: TORONTO SUBURBS				
CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS
Amourdale	48,372	15	7.6	6.7
Downsview	33,656	19	5.2	8.5
Etobicoke	35,977	20	5.6	8.6
Humber	55,985	16	8.8	7.2
*Lakeshore	42,889	34	6.7	15.3
Oriole	47,063	14	7.4	6.3
Scarborough Centre	39,608	12	6.2	5.4
Scarborough East	44,552	15	6.9	6.7
Scarborough-Ellesmere	40,264	12	6.3	5.4
Scarborough North	54,568	14	8.5	6.3
Wilson Heights	43,935	16	6.8	7.2
York Mills	53,081	16	8.4	7.2
York West	50,544	9	7.9	4.0
Yorkview	41,081	10	6.5	4.5
T O T A L S	631,575	222	100.0	100.0
Percentage of Population	12.5			
Percentage of Total Closed Complaints		6.8		

COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT

TABLE NO.: 4 (iv)

REGION THREE: GOLDEN HORSESHOE

CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS
*Brampton	52,419 (U)	46	6.8	10.1
Brock	34,818 (U)	28	4.6	6.1
Burlington South	53,842 (U)	16	7.1	3.5
*Halton-Burlington	38,842 (U)	69	5.1	15.2
Hamilton Centre	37,667 (U)	15	4.9	3.3
Hamilton East	47,379 (U)	11	6.2	2.4
Hamilton Mountain	45,488 (U)	10	5.9	2.2
*Hamilton West	42,021 (U)	33	5.5	7.2
Lincoln	30,211 (U)	24	3.9	5.2
Mississauga East	39,500 (U)	17	5.1	3.7
Mississauga North	46,153 (U)	20	6.0	4.4
Mississauga South	40,104 (U)	15	5.3	3.3
Niagara Falls	43,455 (U)	19	5.7	4.1
Oakville	38,103 (U)	8	5.0	1.7
St. Catharines	48,885 (U)	77	6.4	16.9
*Welland	38,401 (U)	13	5.0	2.8
Wentworth	37,090 (U)	8	4.8	1.7
Wentworth North	45,145 (U)	24	5.9	5.2
T O T A L S	759,472	453	100.0	100.0
Percentage of Population	15.4			
Percentage of Total Closed Complaints		13.9		

TABLE NO.: 4 (v)	TITLE: COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT			
REGION FOUR: ONTARIO WEST CENTRAL				
CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS
*Brantford	42,504 (U)	29	8.3	8.7
Brant-Oxford-Norfolk	37,299 (R)	12	7.3	3.6
Cambridge	44,253 (U)	8	8.7	2.4
Erie	30,615 (U)	35	6.0	10.5
*Haldimand-Norfolk	43,013 (R)	28	8.5	8.4
Kitchener	46,096 (U)	34	9.1	10.2
Kitchener-Wilmot	38,026 (U)	13	7.6	3.9
Oxford	49,055 (M)	23	9.7	6.9
*Perth	43,411 (M)	24	8.6	7.2
Waterloo North	40,726 (U)	12	8.0	3.6
Wellington-Dufferin-Peel	43,105 (R)	17	8.5	5.1
*Wellington South	45,387 (U)	96	8.9	29.0
T O T A L S	503,490	331	100.0	100.0
Percentage of Population	10.2			
Percentage of Total Closed Complaints		10.1		

COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT

TABLE NO.: 4 (vi)

TITLE:

REGION FIVE: ONTARIO WESTERN RING

CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS
*Chatham-Kent	37,789 (U)	64	5.5	14.8
Elgin	38,030 (M)	22	5.6	5.0
Essex North	32,187 (M)	3	4.7	less than 1%
Essex South	34,568 (R)	8	5.0	1.0
Grey	35,278 (R)	102	5.1	23.6
*Grey-Bruce	33,974 (M)	41	4.9	9.4
Huron-Bruce	33,810 (R)	29	4.9	6.7
Huron-Middlesex	29,030 (R)	15	4.2	3.4
Kent-Middlesex	32,306 (R)	16	4.7	3.7
Kent-Elgin	29,457 (R)	8	4.2	1.0
Lambton	47,178 (U)	20	6.9	4.6
*London Centre	46,103 (U)	11	6.7	2.5
London North	55,388 (U)	21	8.0	4.8
London South	31,201 (R)	20	4.4	4.6
Middlesex	44,332 (U)	19	6.4	4.3
*Sarnia	45,232 (U)	10	6.6	2.3
Windsor-Riverside	36,957 (U)	19	5.3	4.3
*Windsor-Sandwich	37,326 (U)	4	5.4	less than 1%
Windsor-Walkerville				
T O T A L S	680,146	432	100.0	100.0
Percentage of Population	13.8			
Percentage of Total Closed Complaints		13.2		

COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT				
TABLE NO.: 4 (vii)	TITLE:			
REGION SIX: TORONTO NORTH-EAST CORRIDOR				
CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS
*Dufferin-Simcoe	45,357 (M)	67	11.3	2.4
Durham East	43,634 (U)	13	10.8	4.7
Durham North	38,674 (R)	18	9.5	6.5
*Durham West	40,207 (U)	23	10.0	8.3
Oshawa	39,463 (U)	15	9.8	5.4
*Simcoe Centre	49,521 (M)	74	12.3	26.9
Simcoe East	42,628 (M)	29	10.5	10.5
York Centre	52,939 (U)	16	13.1	5.8
York North	47,747 (M)	20	11.8	7.2
T O T A L S	400,170	275	100.0	100.0
Percentage of Population	8.1			
Percentage of Total Closed Complaints		8.4		

COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT

TABLE NO.: 4 (viii)

TITLE:

REGION SEVEN: ONTARIO NORTH-CENTRAL

CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS
Frontenac-Addington	32,924 (R)	11	7.6	2.5
Hastings-Peterborough	32,223 (R)	57	7.5	13.2
Kingston & The Islands	38,525 (U)	24	9.0	5.6
Muskoka	23,459 (R)	16	5.4	3.0
*Northumberland	41,399 (M)	24	9.7	5.6
*Parry Sound	27,506 (R)	40	6.4	9.3
*Peterborough	57,575 (U)	63	13.5	14.6
*Prince Edward-Lennox	29,322 (R)	21	6.9	4.8
Quinte	42,649 (U)	55	9.9	12.7
*Renfrew North	28,186 (M)	33	6.6	7.6
Renfrew South	34,050 (R)	67	8.0	15.5
*Victoria-Haliburton	35,617 (R)	19	8.3	4.4
T O T A L S	423,435	430	100.0	100.0
Percentage of Population	8.6			
Percentage of Total Closed Complaints		13.2		

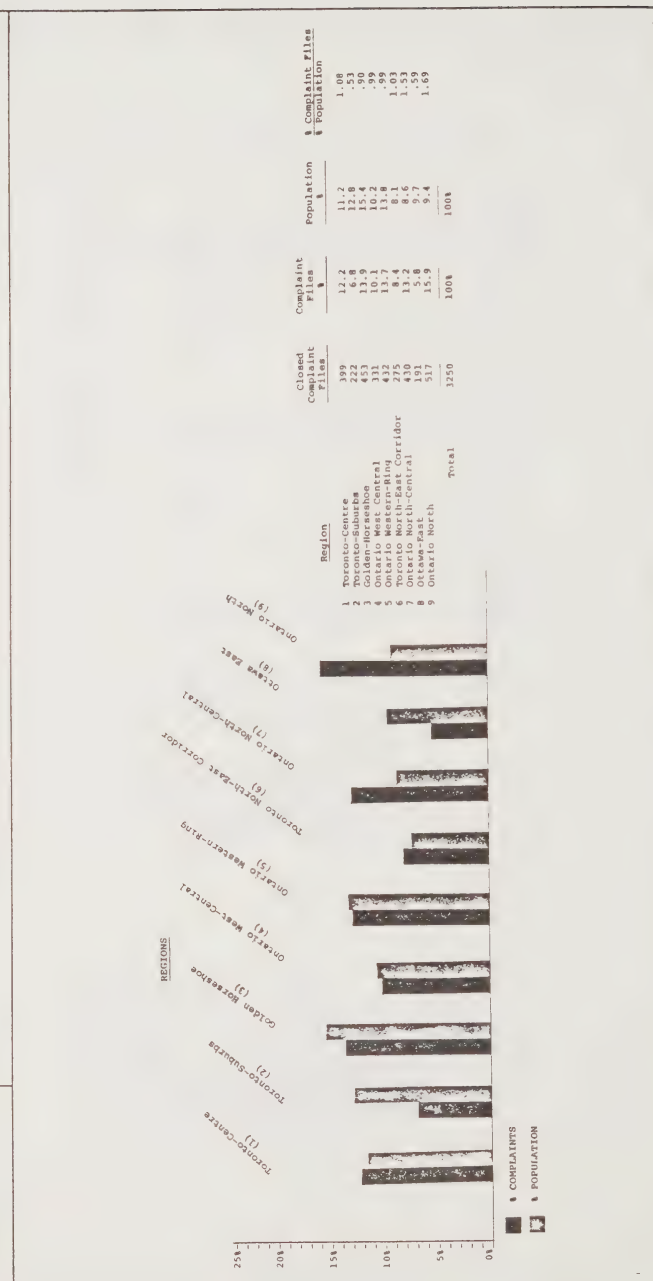
TABLE NO.: 4 (ix)		TITLE: COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT			
REGION EIGHT: OTTAWA-EAST					
CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS	
Carleton	47,599 (U)	7	9.8	3.6	
*Carleton East	50,143 (U)	19	10.4	9.9	
*Carleton-Grenville	34,510 (R)	16	7.1	8.3	
*Cornwall	33,392 (U)	31	6.9	16.2	
*Lanark	28,646 (M)	28	5.8	14.6	
*Leeds	33,936 (M)	20	7.0	10.4	
Ottawa Centre	45,908 (U)	18	9.5	9.4	
Ottawa East	46,387 (U)	10	9.6	5.2	
Ottawa South	50,649 (U)	10	10.5	5.2	
Ottawa West	50,969 (U)	4	10.6	2.0	
*Prescott & Russell	36,606 (R)	13	7.5	6.8	
Stormont-Dundas-Glengarry	30,002 (R)	15	6.2	7.8	
T O T A L S	478,747	191	100.0	100.0	
Percentage of Population	9.7				
Percentage of Total Closed Complaints		5.8			

TABLE NO.: 4 (x)		COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT			
TITLE:		REGION NINE: ONTARIO NORTH			
CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS	
Algoma	17,789	16	3.6	3.1	
Algoma-Manitoulin	18,593	40	3.9	7.7	
Cochrane North	24,492	20	5.2	3.8	
*Cochrane South	33,966	42	7.3	8.1	
*Port William	39,048	31	8.4	5.9	
Kenora	27,254	30	5.8	5.8	
Lake Nipigon	18,046	26	3.9	5.0	
*Nickel Belt	23,577	25	5.0	4.8	
Nipissing	41,173	75	8.9	14.5	
*Port Arthur	37,144	21	8.0	4.0	
*Rainy River	17,718	91	3.7	17.6	
*Sault Ste. Marie	48,133	20	10.4	3.8	
*Sudbury	43,143	31	9.3	5.9	
Sudbury East	43,185	14	9.3	2.7	
*Timiskaming	29,002	35	6.3	6.7	
T O T A L S	462,263	517	100.0	100.0	
Percentage of Population	9.4				
Percentage of Total Closed Complaints		15.9			

TABLE NO.: 5 REGIONAL COMPARISON OF COMPLAINTS AND POPULATION

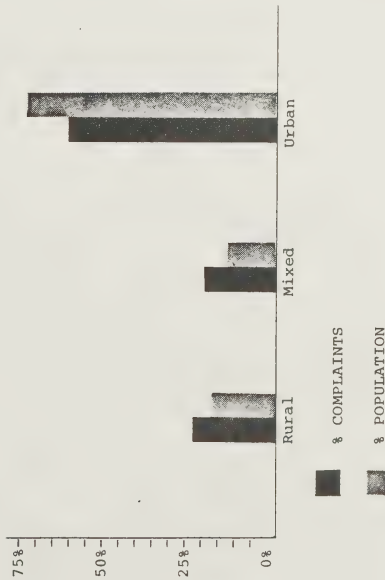
TITLE:

TABLE NO.: 5



TITLE: COMPLAINTS AND POPULATION BY RURAL/URBAN DESIGNATION

TABLE NO.: 6



	Closed Complaints	% Closed Complaints	% Population
Rural	675	20.7%	16.4%
Mixed	578	17.8%	12.9%
Urban	1997	61.5%	70.7%
Total	3250	100%	100%

The percentages do not include closed complaints where the constituency could not be determined.

TABLE NO.: 7 TITLE: DURATION OF IN PROGRESS COMPLAINT FILES/OFFICE WIDE SUMMARY

DIRECTORATE	1975 MAY to DEC. 31	1976 JAN. to JUNE 30	1976 JULY to DEC. 31	1977 JAN. to JUNE 30	1977 JULY to SEPT. 30	*TOTAL NO. OF IN PROGRESS FILES
C.A.P.S.	2 18	7 28	22 58	127 318	252 658	410 178
D. S. S.	17 48	44 118	81 208	126 318	138 348	406 178
INTERVIEW SERVICES	1 38	0 --	1 38	13 358	22 618	37 18
INVESTIGATIONS	29 78	61 148	176 398	157 358	22 58	445 198
NORTH PICKERING	1 18	14 278	68 808	1 278	26 not aged	110 48
OMBUDSMAN GROUP	3 208	7 508	3 208	2 108	0 --	15 218
R.A.M.S.	1 28	1 28	6 128	20 408	23 448	51 28
RECORDS	20 68	86 288	177 588	21 78	2 18	306 138
RESEARCH	15 118	20 148	45 328	38 288	21 148	139 68
S.A. & L.O.	1 18	20 58	49 118	114 268	247 578	436 188
TOTAL NUMBER OF IN PROGRESS	95 48	260 118	628 278	619 268	*753 328 incl. 26 not aged	2355 1008

NOTE: Symbol < for term "less than"

*Explanation: Percentages in this column reflect a directorate's share of the 2355 in progress files. The other percentages reflect the portion of a directorate's in progress files that were opened during the time periods indicated by the column headings.

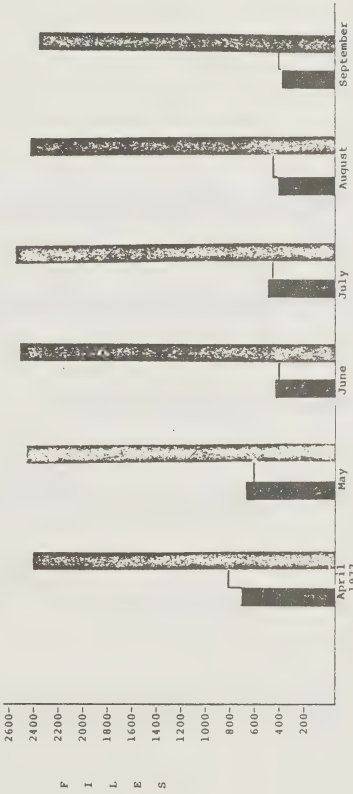
TABLE NO.: 8	TITLE: STATUS OF IN PROGRESS COMPLAINT FILES/OFFICE WIDE SUMMARY
<p data-bbox="236 698 270 966">EXPLANATION OF IN PROGRESS STATUS CATEGORIES</p> <p data-bbox="306 324 340 1351">The following is a list of status categories. The number entered in the status column on the chart reflects the status category most appropriate to a file.</p> <p data-bbox="377 1173 392 1351"><u>STATUS CATEGORIES</u></p> <div data-bbox="410 906 741 1351"> <ol style="list-style-type: none"> 1. The file has not been assigned 2. The file has been assigned but no action has been taken 3. The file is undergoing a review in order to determine jurisdiction 4. The file is undergoing legal research in order to determine jurisdiction 5. Inquiries are being made in the course of preparing a non-jurisdictional letter 6. A non-jurisdictional letter is being prepared 7. The complaint is under investigation without a Section 19(1) letter </div> <div data-bbox="410 238 695 728"> <ol style="list-style-type: none"> 8. The complaint is awaiting investigative assignment pending a Section 19(1) response 9. The complaint is under investigation pursuant to a Section 19(1) letter 10. A Section 19(3) response is pending 11. A Section 22(3) response is pending 12. The complaint is awaiting a Case Conference 13. A closing memorandum is being prepared 14. The file contains all the documentation required for closing </div>	

TABLE NO.: 8 (i)		STATUS OF IN PROGRESS COMPLAINT FILES/OFFICE WIDE SUMMARY														
TITLE.		1	2	3	4	5	6	7	8	9	10	11	12	13	14	TOTALS
C.A.P.S.		62	5	--	--	2	27	72	4	30	3	3	6	136	60	410
D.S.S.		135*	20	10	1	12	25	34	4	46	19	5	35	29	31	406
INTERVIEW SERVICES		--	8	4	--	14	--	1	--	--	--	--	--	7	3	37
INVESTIGATIONS		--	3	1	2	3	2	3	--	298	15	11	22	50	35	445
NORTH PICKERING																110
OMBUDSMAN GROUP		--	1	2	--	3	--	2	--	1	--	--	--	4	2	15
R.A.M.S.		--	4	1	1	2	--	2	7	32	--	--	--	1	1	51
RECORDS																306
RESEARCH		2	--	8	35	--	8	7	5	31	4	3	6	11	19	139
S.A. & L.O.		31	11	64	46	13	49	19	54	76	4	11	--	22	36	436
T O T A L S		230	52	90	85	49	111	140	74	514	45	33	69	260	187	2335

*NOTE - This figure includes 127 complaint files with Section 19(1) letters.

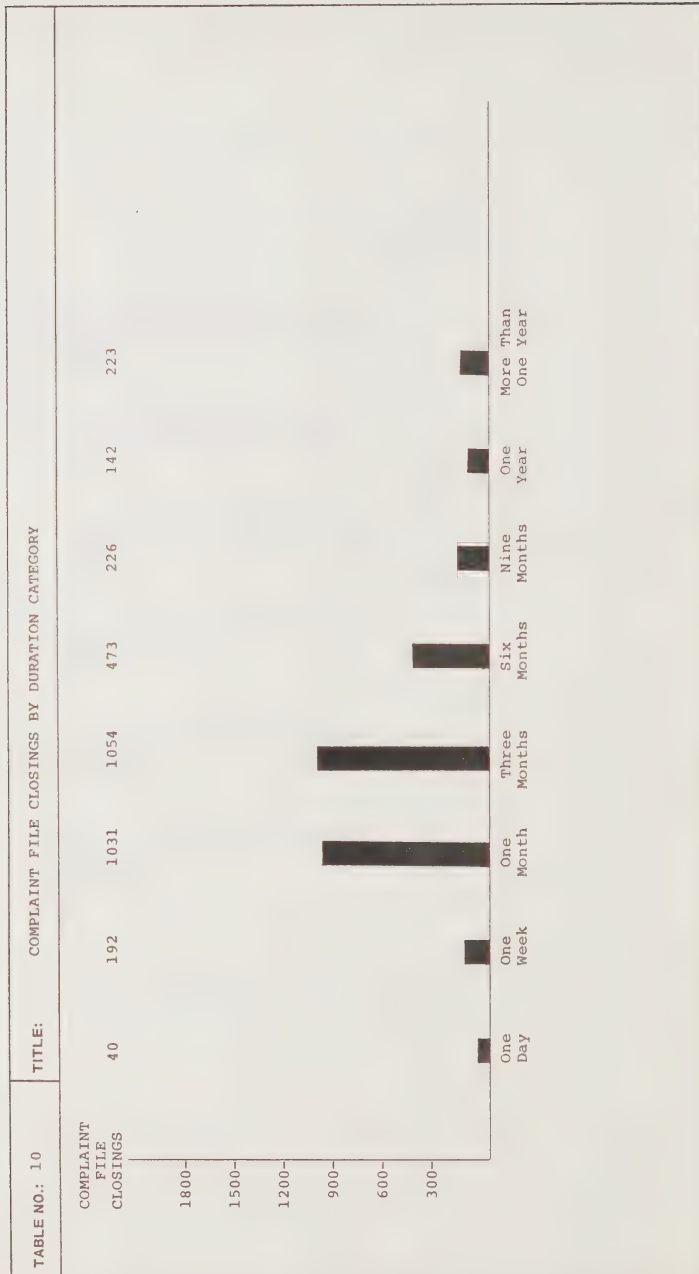
TITLE: COMPLAINT FILE OPENINGS AND COMPLAINT FILE CLOSINGS BY MONTH

FILES	To March 31, 1977	April 1977	May	June	July	August	September	Total
Opened	717	767	595	435	486	374	374	2985
Closed	840	891	564	430	470	407	393	3105
In Progress	2427	2460	2460	2486	2502	2445	2425*	2355*



Note: The figures in brackets represent additional file reopenings and closings involving complainants who have filed a second or third new complaint to the Ombudsman.

*The September 30, 1977 inventory of in progress complaint files counted 2355 files. The difference between those figures 70 reflects the number of file consolidations.



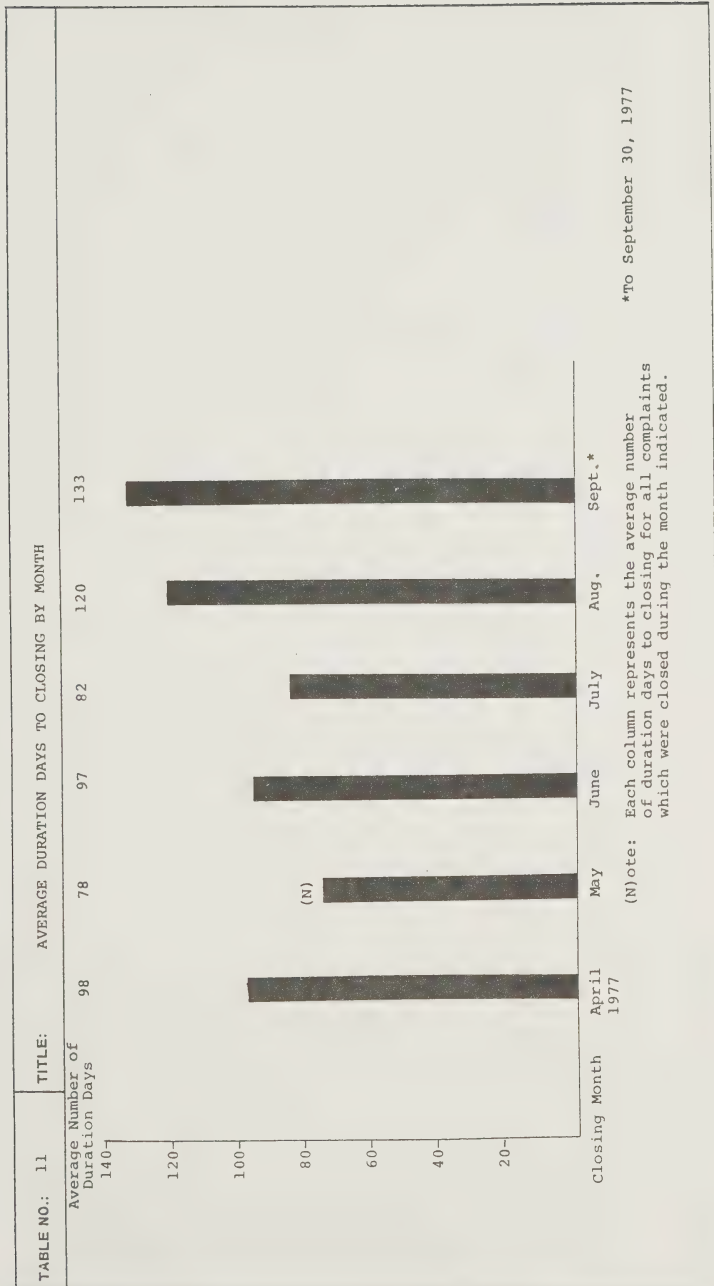


TABLE NO.: 12	TITLE:		MONTH OPENED/MONTH CLOSED CALENDAR YEAR PROFILE							Total File Closings
	Closing Month		April 1977	May	June	July	August	September		
Opening Month										
May/75 to June 30/76	105		35	32	19	41	30	262		
July/76	14		6	8	6	3	3	40		
August	16		2	4	3	6	4	35		
September	17		8	8	7	3	8	51		
October	21		7	9	5	8	8	58		
November	30		10	14	6	6	8	74		
December	28		11	14	9	13	5	80		
January/77	54		29	26	12	10	7	138		
February	161		43	31	22	11	29	297		
March	358		153	37	34	29	33	644		
April	87		235	46	44	20	27	459		
May			66	90	57	23	32	268		
June				137	213	68	45	463		
July					77	113	46	236		
August						103	107	210		
September							66	66		
Total File Closings	891		605	456	514	457	458	3381		

All figures include file closings which result from the re-opening of a file.

All figures include file closings which result from the re-opening of a file.

TABLE NO.: 12 (i)	TITLE: MONTH OPENED/MONTH CLOSED CALENDAR YEAR PROFILE/WITHIN JURISDICTION						
	Closing Month April 1977	May	June	July	August	September	Total Complaints
Opening Month							
May/75 to June 30/76	53	21	20	8	30	31	163
July/76	6	6	5	6	3	2	28
August	6	2	2	3	6	3	22
September	10	7	5	6	2	7	37
October	4	3	5	5	6	11	34
November	15	4	11	5	3	9	47
December	9	3	9	7	10	4	42
January/77	19	12	12	6	6	8	63
February	26	15	18	14	10	28	111
March	29	16	10	25	24	33	137
April	3	14	13	27	14	23	94
May		4	6	30	16	32	88
June			5	27	26	33	91
July				5	15	33	53
August					1	17	18
September						3	3
Total File Closings	180	107	121	174	172	273	1031

All figures include file closings which result from the re-opening of a file.

TABLE NO.: 12 (ii)	TITLE: MONTH OPENED/MONTH CLOSED CALENDAR YEAR PROFILE/OUTSIDE JURISDICTION						
	Closing Month April 1977	May	June	July	August	September	Total Complaints
Opening Month							
May/75 to June 30/76	53	14	11	9	15	5	107
July/76	9		3			1	13
August	8	1	2			1	12
September	7	1	3	1	1	2	15
October	15	3	3	1	3		25
November	19	7	2	1	1	1	31
December	21	8	9	2	3	1	44
January/77	38	16	14	5	3	2	78
February	141	26	12	10		9	198
March	332	131	24	11	9	7	514
April	85	214	33	17	4	5	358
May		56	80	25	7	4	172
June			124	178	43	21	366
July				70		16	178
August					95	99	194
September						59	59
Total File Closings	728	477	320	330	276	233	2364

All figures include file closings which result from the re-opening of a file.

TABLE NO.: 13

TITLE: COMPLAINT FILE ASSIGNMENTS AND FILE CLOSINGS BY DIRECTORATE

Directorates	C.A.P.S.*	D.S.S.**	Interview Services	Investigations	Legal	R.A.M.S.***	Research
C.A.P.S.	(481)****	24	31	17	14	3	13
D.S.S.	24	(276)	134	9	42	8	12
Interview Services	31	134	(392)	56	304	22	34
Investigations	17	9	56	(111)	169	13	55
Legal	14	42	304	169	(1079)	80	73
R.A.M.S.	3	8	22	13	80	(114)	12
Research	13	12	34	55	73	12	(84)
Assignment Totals	583	505	973	430	1761	252	283
Files Closed Totals	538	421	535	269	1327	169	122

* Directorate of Correctional and Psychiatric Services

** Directorate of Special Services

*** Directorate of Rural, Agricultural and Municipal Services

**** The figures in brackets represent the number of files worked on solely by the Directorate shown at the top of the column.

TABLE NO.: 14	TITLE:	COMPLAINTS BY ORGANIZATION				
<u>GOVERNMENT OF ONTARIO</u>						
<u>Ministries/Agencies</u>		<u>Within Jurisdiction</u>	<u>Outside Jurisdiction</u>	<u>Not Determined</u>	<u>Information Requests/ Submissions</u>	<u>Total</u>
<u>Agriculture and Food</u>						
A.R.D.A.		4	2		3	9
Crop Insurance Commission		1				1
Ontario Apple Producers' Marketing Board		1				1
Ontario Egg Producers' Marketing Board			1			1
Ontario Flue-Cured Tobacco Grower's Board		2				2
Ontario Junior Farmer Establishment Loan Corp.			10		1	11
Ontario Milk Marketing Board		2	6			8
<u>Attorney General</u>						
Criminal Injuries Compensation Board		8	26	1	1	36
Ontario Municipal Board		10	1		2	13
		4	15		1	20
<u>Colleges and Universities</u>						
Colleges of Applied Arts and Technology		16	9		2	27
		4	3			7
<u>Community and Social Services</u>						
Centres for Developmentally Handicapped		22	64	2	24	112
Schools		4	2			6
		3	1			4
Total 120						
<u>Consumer & Commercial Relations</u>						
Commercial Registration Appeal Tribunal		36	25	4	4	69
Liquor Control Board		1		1		2
Ontario Racing Commission			1			1
Ontario Securities Commission			1			1
Pension Commission of Ontario		1	1			2
Residential Premises Rent Review Board		25	11	1	2	39

TABLE NO.: 14 (1)	TITLE: COMPLAINTS BY ORGANIZATION					
		Within Jurisdiction	Outside Jurisdiction	Not Determined	Information Requests/ Submissions	Total
Correctional Services		25	11		7	43
Correctional Centres		184	20		23	227
Detention Centres		34	1		1	35
Jails		172	6		5	183
Total 488						
Ontario Board of Parole		5	2		3	10
Culture and Recreation		3	1			4
Ontario Educational Communications Authority		1	1		1	2
Ontario Lottery Corporation		1				1
Province of Ontario Council for the Arts			1			1
Education		6	24	1	2	33
Teacher's Superannuation Commission		2	1			3
Energy		1			1	2
Ontario Energy Board		1	1		2	2
Ontario Hydro		11	7	1	7	19
Environment		11	8		1	20
Government Services		9	6			15
Public Service Superannuation Board			1			1
Health		31	12	1	3	47
Psychiatric Hospitals		57	19	1	11	88
OHIP		11	13	1	10	35
Total 170						
Alcoholism and Drug Addiction Research Foundation		2	1			3

TABLE NO.: 14 (ii)	TITLE:	COMPLAINTS BY ORGANIZATION				
		Within Jurisdiction	Outside Jurisdiction	Not Determined	Information Requests/ Submissions	Total
	Health Disciplines Board	3				3
	Review Board for Psychiatric Facilities	1				1
	Housing	17	18	3	3	41
	Ontario Housing Corporation	19	26	3	8	56
	Industry and Tourism	2	1		2	5
	Northern Ontario Development Corporation	2		1		3
	Ontario Development Corporation	1				1
	Labour	20	11	1	5	37
	Ontario Human Rights Commission	3	1		2	6
	Ontario Labour Relations Board	1	1		1	3
	Women's Compensation Board	137	224		25	386
	Natural Resources	30	26		6	62
	Revenue	34	18	1	4	57
	Solicitor General		2			2
	Ontario Police Commission	5				5
	Ontario Provincial Police		33		1	34
	Transportation and Communications	44	37	1	7	89
	Ontario Highway Transport Board		2			2
	Ontario Northland Transportation Commission	1				1
	Treasury, Economics and Intergovernmental Affairs	2	2	1	1	6
	Total	1033	719	27	171	1950

TABLE NO.: 14 (iii)		TITLE:	COMPLAINTS BY ORGANIZATION				
			Within Jurisdiction	Outside Jurisdiction	Not Determined	Information Requests/ Submissions	Total
<u>Government of Ontario Other</u>							
Management Board				1		1	2
Civil Service Commission			2	1			3
Public Service Grievance Board			2				2
Office of the Assembly				2			2
Office of the Premier/Cabinet Office				3			3
Provincial Secretariat for Resources Development							
Niagara Escarpment Commission			1	4			5
Provincial Secretariat for Social Development				1		1	2
Ontario Advisory Council on Senior Citizens			1			7	1
Office of the Ombudsman				1			8
Executive Council				2			2
Other					4		4
Total			6	15	4	9	34
Government of Ontario Total			1039	734	31	180	1984
Courts							
Total				170		1	171
<u>FEDERAL GOVERNMENT DEPARTMENTS/AGENCIES</u>							
Canadian Penitentiary Services				11			11
Central Mortgage and Housing				6			6
Consumer and Corporate Affairs				2			2
Office of the Correctional Investigator				1		5	1
Health and Welfare				14			19
Indian Affairs and Northern Development							8
Justice				1			1
Manpower and Immigration				20			20

TABLE NO.: 14 (iv)	TITLE:	COMPLAINTS BY ORGANIZATION				
		Within Jurisdiction	Outside Jurisdiction	Not Determined	Information Requests/ Submissions	Total
	National Parole Board		13		1	14
	Post Office		12			12
	Public Works		1			1
	Revenue Canada - Taxation		23			23
	Royal Canadian Mounted Police		11			11
	Transport		6			6
	Unemployment Insurance Commission		72			72
	Veteran Affairs		12		1	13
	Federal Government - Other		24		1	25
	Total		237		8	245
	PRIVATE					
	Associations/Groups		50		2	52
	Children's Aid Society		15		1	16
	Doctors - Patients		13			13
	Hospitals		14			14
	Lawyers - Clients		101			101
	Law Society of Upper Canada		20			20
	College of Physicians and Surgeons		2			2
	Other - Private		91		8	99
	Private Business		371		2	373
	Private Individual		113		3	116
	Universities - Private		8			8
	Member of Parliament		1			1
	Total		799		16	815

TABLE NO.: 14 (v)	TITLE:	COMPLAINTS BY ORGANIZATION				
		Within Jurisdiction	Outside Jurisdiction	Not Determined	Information Requests/ Submissions	Total
<u>MUNICIPALITIES/LOCAL AUTHORITIES</u>						
Municipalities		317			5	322
Municipal Police		80			4	84
Total		397			9	406
<u>INTERNATIONAL</u>						
Total		5				5
<u>OTHER PROVINCES</u>						
Total		15			1	16
<u>NO ORGANIZATION SPECIFIED</u>						
Total		12	10		3	25
OVERALL TOTAL		1039	2369	41	218	3667*

* This figure exceeds the total number of closed complaints (3652) because some complaints involve more than one organization.

TABLE NO.: 15	TITLE: CONTACTS BY ORGANIZATION
<p><u>GOVERNMENT OF ONTARIO</u> <u>CONTACTS</u></p> <p><u>Ministries/Agencies</u></p> <p>Agriculture and Food 8</p> <p> A.R.D.A. 1</p> <p> Agricultural Tile Drainage Licence Review Board 1</p> <p> Crop Insurance Commission 1</p> <p> Farm Products Marketing Board 2</p> <p> Ontario Egg Producer's Marketing Board 1</p> <p> Ontario Flue-Cured Tobacco Grower's Board 10</p> <p> Ontario Milk Marketing Board 4</p> <p>Attorney General 26</p> <p> Criminal Injuries Compensation Board 9</p> <p> Land Compensation Board 2</p> <p> Ontario Municipal Board 11</p> <p>Colleges and Universities 19</p> <p> Colleges of Applied Arts and Technology 7</p> <p>Community and Social Services 60</p> <p> Centres for Developmentally Handicapped 1</p> <p> Schools 3</p> <p> Total 164</p> <p> Social Assistance Review Board 1</p> <p>Consumer and Commercial Relations 83</p> <p> Liquor Control Board 2</p> <p> Pension Commission of Ontario 2</p> <p> Residential Premises Rent Review Board 17</p> <p>Correctional Services 41</p> <p> Correctional Centres 153</p> <p> Detention Centres 19</p> <p> Jails 136</p> <p> Total 349</p> <p> Ontario Board of Parole 1</p> <p>Culture and Recreation 5</p> <p> Ontario Educational Communications Authority 2</p> <p> Ontario Lottery Corporation 1</p> <p> Province of Ontario Council for the Arts 1</p> <p>Education 29</p> <p> Teacher's Superannuation Commission 4</p> <p>Energy 3</p> <p> Ontario Energy Board 2</p> <p> Ontario Hydro 13</p> <p>Environment 31</p> <p> Environmental Assessment Board 4</p> <p>Government Services 10</p> <p>Health 42</p> <p> Psychiatric Hospitals 66</p> <p> OHIP 18</p> <p> Total 126</p> <p> Alcoholism & Drug Addiction Research Foundation 1</p> <p> Health Disciplines Board 6</p>	

TABLE NO.: 15 (i)	TITLE: CONTACTS BY ORGANIZATION
	<u>CONTACTS</u>
Housing	51
Ontario Housing Corporation	35
Industry and Tourism	7
Northern Ontario Development Corporation	1
Labour	35
Ontario Human Rights Commission	5
Ontario Labour Relations Board	2
Workmen's Compensation Board	267
Natural Resources	46
Northern Affairs	1
Revenue	34
Solicitor General	1
Ontario Provincial Police	7
Ontario Police Commission	4
Transportation and Communications	59
Ontario Highway Transport Board	1
Treasury, Economics & Intergovernmental Affairs	9
Total	<u>1424</u>
<u>Ontario Government Other</u>	
Ontario Municipal Employees Retirement Board	1
Management Board	1
Civil Service Commission	3
Public Service Grievance Board	4
Office of the Assembly	1
Office of the Premier/Cabinet Office	1
Niagara Escarpment Commission	5
Ontario Advisory Council on Senior Citizens	1
Ontario Youth Secretariat	1
Total	<u>18</u>
Government of Ontario Total	<u>1442</u>
Courts	
Total	<u>7</u>
<u>FEDERAL GOVERNMENT DEPARTMENTS/AGENCIES</u>	
Canadian Penitentiary Services	1
Millhaven Penitentiary	1
Central Mortgage and Housing	2
Consumer and Corporate Affairs	4
Office of the Correctional Investigator	1
Health and Welfare	5
Indian Affairs & Northern Development	2
Justice	1
Manpower and Immigration	7
National Parole Board	5

TABLE NO.: 15 (ii)	TITLE: CONTACTS BY ORGANIZATION
	<u>CONTACTS</u>
Post Office Revenue Canada - Taxation Royal Canadian Mounted Police Transport Unemployment Insurance Commission Veteran Affairs Federal Government - Other	1 3 1 2 14 2 7
Total	<hr/> 59
<u>PRIVATE</u>	
Associations/Groups Children's Aid Society Complaint Bureaus Doctors - Patients Hospitals Lawyers - Clients Law Society of Upper Canada College of Physicians & Surgeons Other - Private Private Business Private Individual Universities - Private Member of Parliament	31 3 1 18 8 10 6 1 2 26 1 10 6
Total	<hr/> 123
<u>MUNICIPALITIES/LOCAL AUTHORITIES</u>	
Municipalities Municipal Police	53 2
Total	<hr/> 55
<u>INTERNATIONAL</u>	
Total	<hr/> 1
<u>OTHER PROVINCES</u>	
Total	<hr/> 4
OVERALL TOTAL	<hr/> 1691

TABLE NO.: 16	TITLE: OUTSIDE JURISDICTION COMPLAINTS BY REASONS	
<u>REASONS</u>	<u>Number of Complaints</u>	<u>Percentage of Complaints</u>
Not a Governmental Organization	15	Less than 1%
Not Affected in Personal Capacity	61	2.5
Cabinet	31	1.3
Premature	681	28.8
Judges/Court	184	7.8
Legal Advisor or Counsel to Crown	17	Less than 1%
Private	803	33.9
Municipal/Local	316	13.3
Other Provinces/Countries	22	Less than 1%
Federal	234	9.8
OUTSIDE JURISDICTION COMPLAINT TOTAL	2364	

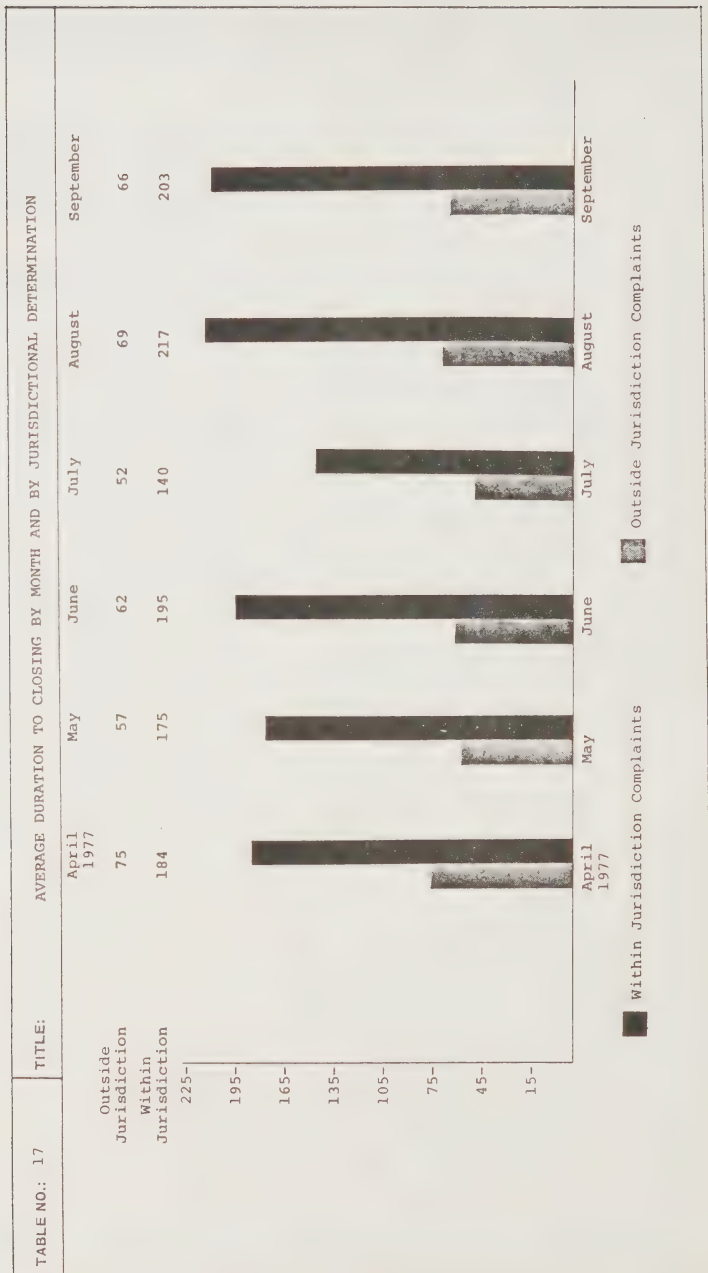


TABLE NO.: 18	TITLE: FINAL ACTION ANALYSIS/ ASSISTANCE TO COMPLAINANTS
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<u>ALL COMPLAINTS</u>		
<u>Action</u>	<u>Number of Complaints</u>	
Refuse to Investigate or Further Investigate	16	No Assistance 4%
Listen	145	
Explain	182	
Advise	133	
Refer	1432	
Inquire/Refer	762	
Inquire	952	
Suggest	10	Assistance 96%
Recommendation	20	
TOTAL	3652	

<u>WITHIN JURISDICTION COMPLAINTS</u>		
<u>Action</u>	<u>Number of Complaints</u>	
Refuse to Investigate or Further Investigate	16	No Assistance 9%
Listen	83	
Explain	43	
Advise	5	
Refer	8	
Inquire/Refer	25	
Inquire	821	
Suggest	10	Assistance 91%
Recommendation	20	
TOTAL	1031	

<u>OUTSIDE JURISDICTION COMPLAINTS</u>		
<u>Action</u>	<u>Number of Complaints</u>	
Listen	33	No Assistance 1%
Explain	105	
Advise	111	
Refer	1383	
Inquire/Refer	637	Assistance 99%
Inquire	95	
TOTAL	2364	

TABLE NO.: 19		TITLE: FINAL ACTION/AVERAGE DURATION TO CLOSING											
		279	121	125	59	44	88	181	343	479			
**500-													
**450-													
**400-													
**350-													
**300-													
**250-													
**200-													
**150-													
**100-													
**50-													
FINAL ACTION	*Re-Inv.	*Lis.	*Exp.	*Adv.	*Ref.	*Inq./Ref.	*Inq.	*Sugg.	*Rec.				
Number of Complaints	16	145	182	133	1432	762	952	10	20				

*Final Action
 Refuse to Investigate
 or Further Investigate
 Listen
 Explain
 Advise
 Refer
 Inquire/Refer
 Inquire
 Suggest
 Recommendation

<u>STATUS</u>	<u>NUMBER OF CLOSED COMPLAINTS</u>
Resolved/Assisted	590
Resolved/Independent	228
Total Resolved	818
Not Resolved	2834
Total Complaints	3652
 <u>REASONS</u> (Not Resolved)	
Abandoned	178
Withdrawn	130
No Solution Identified	2
Circumstances Changed	49
Information Requests/Submissions	216
Outside Jurisdiction	2243
Refuse to Investigate or Further Investigate	16
Total Not Resolved	2834

TABLE NO.: 21	TITLE: COMPLAINT SETTLEMENT RESULT BY ORGANIZATION
<u>GOVERNMENT OF ONTARIO</u>	
<u>Ministries/Agencies</u>	
Agriculture and Food - A.R.D.A. Crop Insurance Commission Ontario Egg Producer's Marketing Board Ontario Milk Marketing Board	
Attorney General Criminal Injuries Compensation Board Ontario Municipal Board	
Colleges and Universities Colleges of Applied Arts and Technology	
Community and Social Services Centres for Developmentally Handicapped Schools	
Consumer and Commercial Relations Liquor Control Board Pension Commission of Ontario Residential Premises Rent Review Board	
Correctional Services Correctional Centres Detention Centres Jails Ontario Board of Parole	

NOTE: "RD" indicates "Recommendation Denied"

TABLE NO.: 21 (1)	TITLE: COMPLAINT SETTLEMENT RESULT BY ORGANIZATION	Assisted		Independently	
		Favour Complainant	Favour Governmental Organization	Favour Complainant	Favour Governmental Organization
	Culture and Recreation Ontario Educational Communications Authority Ontario Lottery Corporation	1	1	1	1
	Education Teacher's Superannuation Commission	1	4	1	1
	Energy Ontario Hydro	2	5		
	Environment Government Services	2	7	1	2
	Health Psychiatric Hospitals OHIP Alcoholism and Drug Addiction Research Foundation Health Disciplines Board Review Board for Psychiatric Facilities	5 6 4	12 31 2 1 1 1	1 9 2	1 2
	Housing Ontario Housing Corporation	3 4	7 12	1 2	
	Industry and Tourism Northern Ontario Development Corporation		1		1
	Labour Ontario Human Rights Commission Ontario Labour Relations Board Workmen's Compensation Board	3 26	12 3 1 60	2 44	

NOTE: "ND" indicates "Recommendation Denied"

TABLE NO.: 21 (ii)	TITLE:	COMPLAINT SETTLEMENT RESULT BY ORGANIZATION	Assisted			Independently	
			Favour Complainant	Favour Governmental Organization	Favour Complainant	Favour Complainant	Favour Complainant
	Natural Resources		7	13		6	
	Revenue		9	6		9	
	Solicitor General						
	Ontario Police Commission			4			
	Transportation and Communications		5	16		11	
	Ontario Northland Transportation Commission			1			
	Treasury, Economics and Intergovernmental Affairs		1	1			
	Total		160	414		206	
	Ontario Government Other						
	Civil Service Commission			2			
	Public Service Grievance Board			1		1	
	Niagara Escarpment Commission						
	Ontario Advisory Council on Senior Citizens		1				
	Total		1	3		1	
	Government of Ontario Total		161	417		207	
	Courts						
	Total					3	

NOTE: "RD" indicates "Recommendation Denied"

TABLE NO.: 21 (iii)	TITLE: COMPLAINT SETTLEMENT RESULT BY ORGANIZATION						
	<table><tr><th colspan="2">Assisted</th><th>Independently</th></tr><tr><th>Favour Complainant</th><th>Favour Governmental Organization</th><th>Favour Complainant</th></tr></table>	Assisted		Independently	Favour Complainant	Favour Governmental Organization	Favour Complainant
Assisted		Independently					
Favour Complainant	Favour Governmental Organization	Favour Complainant					
<u>FEDERAL GOVERNMENT DEPARTMENTS/AGENCIES</u>							
Health and Welfare		2					
Manpower and Immigration		1					
National Parole Board		1					
Revenue Canada - Taxation	1						
Royal Canadian Mounted Police	2	1					
Unemployment Insurance Commission		2					
Total :	3	7					
<u>PRIVATE</u>							
Associations/Groups	1	1					
Hospitals	1						
Lawyers - Clients		1					
Law Society of Upper Canada	2	1					
Private Business	1	3					
Private Individual							
Total	5	5					
<u>MUNICIPALITIES/LOCAL AUTHORITIES</u>							
Municipalities	3	3					
Municipal Police	2	1					
Total	5	4					
<u>INTERNATIONAL</u>							
Total		1					

TABLE NO.: 21 (iv)	TITLE:	COMPLAINT SETTLEMENT RESULT BY ORGANIZATION			
		Assisted		Independently	
		Favour Complainant	Favour Governmental Organization	Favour Complainant	
<u>OTHER PROVINCES</u>					
	Total	1			
	OVERALL TOTAL	175	417 + 5 RD	228	
NOTE: "RD" indicates "Recommendation Denied"					

TABLE NO.: 22	TITLE:	COMPLAINT DISPOSITION SUMMARY		
NUMBER OF COMPLAINT FILE OPENINGS/CLOSINGS OPENED 3255 CLOSED 3381 IN PROGRESS 2355	SETTLEMENT STATUS: RESOLVED/ASSISTED RESOLVED/INDEPENDENT TOTAL RESOLVED			NUMBER OF COMPLAINTS 590 228 818
<u>JURISDICTION</u> WITHIN 1031 OUTSIDE 2364 NOT DETERMINED 41 INFORMATION REQUESTS/SUBMISSIONS 216	FINDINGS: SUPPORTED NOT SUPPORTED NOT RESOLVED: REASONS: ABANDONED WITHDRAWN NO SOLUTION IDENTIFIED CIRCUMSTANCES CHANGED INFORMATION REQUESTS/SUBMISSIONS OUTSIDE JURISDICTION REFUSE TO INVESTIGATE OR FURTHER INVESTIGATE			113 412 2834
<u>FINAL ACTION</u> LISTEN 145 EXPLAIN 182 ADVISE 133 REFER 1432 INQUIRE/REFER 762 INQUIRE 952 SUGGEST 10 RECOMMENDATION 20 REFUSE TO INVESTIGATE 16 OR FURTHER INVESTIGATE	RESULTS: (ONLY RESOLVED COMPLAINTS) FAVOUR COMPLAINANT FAVOUR "GOVERNMENTAL ORGANIZATION" RECOMMENDATION DENIED			178 130 2 49 216 243 16
				401 412 5

TABLE NO.: 23	TITLE: DEFINITION OF TERMS
<p data-bbox="485 278 558 295" style="text-align: center;"><u>GENERAL</u></p> <p data-bbox="223 329 343 346">"ASSIGNMENT"</p> <p data-bbox="223 361 762 412">The allocation of a complainant's file to a Directorate.</p> <p data-bbox="223 463 313 480">"CONTACT"</p> <p data-bbox="223 495 855 612">A communication between the Ombudsman's staff and staff of the organization complained against which is <u>instrumental</u> in promoting either the resolution of a complaint or other forms of assistance such as a referral.</p> <p data-bbox="223 663 324 681">"DURATION"</p> <p data-bbox="223 695 845 780">The number of calendar days from the date the complaint is received to the date on which the complaint file is closed.</p> <p data-bbox="417 845 632 863" style="text-align: center;"><u>COMPLAINT DISPOSITION</u></p> <p data-bbox="223 914 365 931">"JURISDICTION"</p> <p data-bbox="223 946 835 1268">A determination of whether the Ombudsman is empowered to investigate a complaint. The jurisdictional determination is based on an evaluation of the complaint in the context of the provisions of <u>The Ombudsman Act, 1975</u>, in particular, Section 15(1) which requires that a complaint be directed against a "governmental organization" as defined in Section 1(a) of the Act. Other sections of the Act specifically limit the Ombudsman's jurisdiction to investigate complaints. These other reasons are listed in this chapter under the heading "JURISDICTION".</p>	

TABLE NO.: 23 (i)	TITLE: DEFINITION OF TERMS
<p data-bbox="135 231 280 249">"FINAL ACTION"</p> <p data-bbox="135 268 754 353">The extent of the action taken on a complaint as determined at the time of the closing of a file. The final action possibilities are:</p> <div data-bbox="324 371 586 543"><p>"Listen"</p><p>"Explain"</p><p>"Advise"</p><p>"Refer"</p><p>"Inquire/Refer"</p><p>"Inquire"</p><p>"Suggest"</p><p>"Recommendation"</p><p>"Refuse to Investigate or Further Investigate"</p></div> <p data-bbox="135 580 218 595">"LISTEN"</p> <p data-bbox="135 614 764 698">The extent of the action taken when a complaint is received and no further action is possible, such as when a complaint is abandoned or withdrawn.</p> <p data-bbox="135 750 228 765">"EXPLAIN"</p> <p data-bbox="135 786 785 839">The extent of the action taken when a complainant is offered an explanation of his or her circumstances.</p> <p data-bbox="135 891 218 906">"ADVISE"</p> <p data-bbox="135 926 785 979">The extent of the action taken when a complainant is offered general advice concerning his or her problem.</p> <p data-bbox="135 1031 208 1046">"REFER"</p> <p data-bbox="135 1065 774 1118">The extent of the action taken when the complainant is directed to a specific organization.</p> <p data-bbox="135 1170 291 1185">"INQUIRE/REFER"</p> <p data-bbox="135 1205 774 1326">The extent of the action taken when the complainant is directed to a specific organization as the result of contacts between the Ombudsman's staff and the staff of the organization to which the referral is made.</p>	

TABLE NO.: 23 (ii)	TITLE:	DEFINITION OF TERMS
		<p>"INQUIRE"</p> <p>The extent of the action taken when contacts are made on behalf of the complainant, but there is not a referral nor a suggestion or recommendation. All inquiries include either advice or an explanation.</p> <p>"SUGGEST"</p> <p>The extent of the action taken when an inquiry results in a proposed course of action for resolving the problem. A "Suggest" action may involve organizations which are not "governmental organizations" within the meaning of <u>The Ombudsman Act, 1975.</u></p> <p>"RECOMMENDATION"</p> <p>The extent of the action taken when, pursuant to Section 22(3) of <u>The Ombudsman Act, 1975</u>, an investigation results in a recommendation to a "governmental organization".</p> <p>"REFUSE TO INVESTIGATE OR FURTHER INVESTIGATE"</p> <p>The extent of the action taken when the Ombudsman decides not to investigate or further investigate a complaint. This action category applies only to complaints within the jurisdiction of the Ombudsman.</p> <p>"SETTLEMENT"</p> <p>A set of determinations which describe the finalization of a complaint in terms of the following considerations:</p> <ul style="list-style-type: none">(i) Was the complaint resolved?(ii) For those complaints that were resolved:<ul style="list-style-type: none">(a) Was the complaint resolved as a result of the Ombudsman's assistance or was the complaint independently resolved?(b) Was there a finding that the complaint was supported or not supported?

TABLE NO.: 23 (iii)	TITLE:	DEFINITION OF TERMS
		<p>(c) Was the complaint resolved in favour of the complainant or was the complaint resolved in favour of the "governmental organization"?</p>
		<p>"SETTLEMENT STATUS"</p> <p>A determination of whether a complaint was resolved.</p>
		<p>"FINDING"</p> <p>A decision by the Ombudsman that the complainant's contentions were founded or unfounded. The former are designated as "Supported" complaints, and the latter are designated as "Not Supported" complaints.</p>
		<p>"RESOLVED COMPLAINT"</p> <p>A complaint which culminates in a settlement result which favours either the complainant or the organization complained against. All resolved complaints include a determination of whether the complaint was resolved with the assistance of the Ombudsman or independently.</p>
		<p>"NOT RESOLVED COMPLAINT"</p> <p>A complaint which does not culminate in a settlement result for one of the following reasons:</p> <ul style="list-style-type: none">(a) The complaint was abandoned.(b) The complaint was withdrawn.(c) An appropriate solution could not be identified.(d) The relevant circumstances changed in the course of an investigation.(e) The complaint constituted a request for information.

TABLE NO.: 23 (iv)	TITLE: DEFINITION OF TERMS
<p data-bbox="342 215 822 266">(f) The complaint was outside the jurisdiction of the Ombudsman.</p> <p data-bbox="342 283 788 334">(g) The Ombudsman refused to investigate or further investigate.</p> <p data-bbox="239 382 432 400">"SETTLEMENT RESULT"</p> <p data-bbox="237 417 829 535">A determination of whether the complaint was resolved in favour of the complainant or the "governmental organization" complained against or a recommendation was denied by a "governmental organization".</p>	

CHAPTER FOUR

DETAILED CASE SUMMARIES

MINISTRY OF

AGRICULTURE AND FOOD

(1) SUMMARY OF COMPLAINT

This complaint was referred to our Office by an M.P.P. on behalf of one of his constituents. At the time that the complaint was received, the complainant had retired from the Ministry of Agriculture and Food after 27 years of service.

The complainant had been employed with the Ministry for 19 years and had attained the level of Agricultural Officer Group 2, when in August, 1967, he was summoned to a meeting with his Deputy Minister. The complainant stated that present at the meeting were the Deputy Minister, the Director of Personnel and himself. He said that the Deputy Minister offered him a new position which at the time was not classified. He was told by the Deputy Minister, he said, that if he accepted the position, he would be reclassified and promoted to Agricultural Officer Group 3 with the appropriate salary increase. The promise was a made orally.

The complainant accepted the position, in which he remained for seven years until his retirement in July, 1975. He never received the promotion which would have resulted in a pay increase as well as an increased pension. We advised the Ministry of our intention to investigate the complaint.

The Ministry responded, saying, in part, that three requests for classification to Agricultural Officer 3 had been submitted to the Civil Service Commission on behalf of the complainant between December, 1967 and October, 1971. The requests had been refused by the Civil Service Commission and the position remained at the Agricultural Officer 2 level. The Ministry also explained that the Civil Service Commission, at that time, had the final authority for classification.

The views of the Civil Service Commission were also solicited. We were told that representations had been made on the complainant's behalf to upgrade the classification of his position to Agricultural Officer 3, but that after careful investigation, the Commission confirmed the classification of his position as Agricultural Officer 2.

Meetings and discussions were held with officials of the Ministry and of the Civil Service Commission. The records of the Ministry were examined. The Personnel Director did not recall having attended the meeting at which the complainant said he had been promised a reclassification.

In discussions with the Deputy Minister, he explained that he had not been in a position to promise the complainant a promotion. It was understood, he said, that since the position was unclassified at the time that the complainant accepted it, a job description would have to be written and submitted to

the Civil Service Commission for classification. Three requests for reclassification had been submitted to the Civil Service Commission and the first had been signed by the Deputy Minister himself.

The Civil Service Commission had felt that the job content did not warrant Agriculture Officer 3 status.

Following the refusal of the Civil Service Commission to upgrade the position, conversations between the complainant and the Director of Personnel led to discussions with the Civil Service Commission, but there was no increased classification.

The complainant later met with the Deputy Minister, who explained to him that attempts at upgrading his position had not been approved by the Civil Service Commission.

Our Investigator also learned that at the level of Agricultural Officer 2, the complainant had a right to grieve his classification, with ultimate recourse to the Public Service Grievance Board, since he was excluded from Schedule 1 of the Regulations to The Public Service Act. The complainant had not exercised that right. In later discussions, he explained that he had not known of that right.

The complaint was found to be unsupported because:

1. The complainant had not received the promise in writing, the Personnel Director could not recall having attended the meeting and the Deputy Minister denied having made such a promise.
2. The Deputy Minister had personally signed the first request for classification, indicating that he made an attempt at obtaining reclassification for the complainant.
3. The Civil Service Commission had the final authority for classification; and
4. The complainant did not exercise his right to grieve.

Reporting letters were sent to the complainant and Ministry advising them of the results of our investigation.

(2)

SUMMARY OF COMPLAINT

This complainant, a farmer in Central Ontario, sent a boar hog to a slaughter plant to be killed. He intended to use the meat from the animal for his own use but after it was slaughtered, it was inspected and found to be affected by an abnormal odour. The carcass was subsequently condemned and rendered unfit for human or animal consumption.

The complainant felt that the plant inspector's actions were unfair in that he had intended the meat to be used for his own consumption and also because he had been told that if he had slaughtered the animal on his own farm, he could have used the meat had he chosen to do so. The farmer contended that he had received no compensation for the boar meat which he valued at \$100.

Members of the Directorate of Rural, Agricultural and Municipal Services determined during an investigation that the plant in which the hog was slaughtered is licensed and inspected pursuant to The Meat Inspection Act and that after the slaughter, the carcass was inspected according to the regulations made under the Act.

The Ombudsman concluded that the Ministry's actions respecting the inspection and disposal of the complainant's slaughtered boar were in accordance with its Province-wide policy to ensure that only meat which is fit for human or animal consumption is approved. It was determined that if the procedures in force were not followed, it would be impossible to distinguish approved meat from unapproved meat until the carcasses in question were cut up for sale at the retail level, and that, accordingly, the Ministry's actions through the Inspector were not unreasonable.

Accordingly, we advised the complainant that we were unable to support his grievance against the Ministry.

MINISTRY OF

THE ATTORNEY GENERAL

(3)

SUMMARY OF COMPLAINT

The complainant was raped by a number of men in 1971, four of whom were subsequently tried and convicted. The legal proceedings, including appeals, were not concluded until 1976.

Subsequent to this, in 1976, the complainant submitted an Application for Extension of the Limitation Period to the Criminal Injuries Compensation Board to apply for compensation. This application was rejected by the Board, which noted that her approach was four years beyond the limitation period set forth in The Compensation for Victims of Crime Act. The members of the Board were of the view that the prolonged court proceedings would not have precluded her from filing an Application for Compensation within one year from the date of the offence.

The complainant then retained the services of a lawyer in her effort to obtain compensation. Her counsel submitted his complaint to our Office in early 1977, concerning the decision of the Board not to grant an extension of the limitation period for his client's application for compensation.

He contended that the Board's decision was unfair in view of the nature of the offence, and the fact that throughout the entire Court proceedings the complainant had not been advised of the existence of the Board by either the police or Court officials.

During the course of our investigation, both the complainant and her lawyer were interviewed in order to obtain additional information pertaining to the reasons for her late filing of her Application for Extension of the Limitation Period. Our Investigator also visited the Crown Attorney's Office in the city where the offence had occurred, with the prior consent of the complainant, in order to review the relevant file material located there. Additional documentation was obtained from the complainant's physician, serving to confirm her description of the emotional problems suffered by her as a result of the offence and of the subsequent court proceedings.

After having considered all of the information obtained during the course of our investigation, the Ombudsman was of the opinion that the decision of the Criminal Injuries Compensation Board not to grant an extension of the limitation period was unreasonable in view of the circumstances of the case. He was also of the opinion that it was thus open to him to recommend that the Board hold a hearing upon the application of the complainant to extend the time for hearing the application for compensation, which hearing would entitle the complainant to call viva voce evidence to support her application for an extension.

In his report to the Chairman of the Board in July, 1977, the Ombudsman said:

"Although I am fully aware that it is not the policy of the Board, nor is it a requirement under The Compensation for Victims of Crime Act for the Board to consider Applications for Extension of the Limitation Period at a hearing, I am prepared to make the aforementioned recommendation in view of the special circumstances whereby:

- (1) the complainant was involved in court proceedings lasting over four years during which time, she indicates, she was not informed either by the police or by representatives of the Court of the existence of the Board, and
- (2) there is some evidence of various long-term emotional and physical problems as a result of the offence, some of which appeared immediately subsequent to the offence, and some of which have developed more recently, and which can apparently be partially attributed to the complainant's participation in the prolonged court proceedings."

In response, the Chairman of the Board informed the Ombudsman that he had, in fact, decided to take his recommendation one step further by granting an actual hearing on the application for compensation, on its merits, thus foregoing a hearing on the application for an extension.

The Chairman's response said, in part:

"After thoroughly reviewing the file, it is the decision of the Board that the complainant's application for compensation shall be heard ...

You will note that we are going somewhat beyond your request for a viva voce hearing on the application for extension, as we feel that to prolong this matter further by hearing the application for an 'extension' only, and then to have a hearing on the application for 'compensation', would only cause further anguish to the complainant, if the ultimate result should be a denial of compensation, particularly as it would bring her, in such an instance, before the Board twice."

The complainant and her lawyer were sent reports containing the results of the investigation conducted, including the fact that the Chairman of the Board had also indicated that the complainant would be advised of the date set for the hearing by the Board.

In November, 1977, in order to update our information, our Investigator contacted a representative of the Board and was advised that the date for the hearing on the application for compensation had not yet been scheduled as the Board was awaiting certain medical reports and documentation from the complainant.

(4) SUMMARY OF COMPLAINT

The complainant was a widow whose husband had been murdered in 1969. The complainant's husband had been the sole source of support for herself and their five children (a sixth being born after his death). His assailant was never identified nor apprehended.

As she spoke English poorly, she did not find out about her right to apply for compensation to the Criminal Injuries Compensation Board until 1975. She then sought the assistance of a community law office, which forwarded an application to the Board for compensation.

The Board denied the application on the basis of the statutory limitation period of one year in The Law Enforcement Compensation Act (then the applicable statute). The Board has the discretion to extend the time for an application where it considers such an extension warranted. However, on an application to extend the time for the application made in 1975, the Board declined to exercise that discretion. The community law office representing the complainant took exception to the Board's decision, as it had not been afforded an opportunity to present the case for an extension of time at an open hearing. Furthermore, the office objected to the lack of reasons offered by the Board for its decision.

In 1976 the community law office wrote to the Ombudsman regarding this matter, and pointed out the recent decision of the Divisional Court in which the Criminal Injuries Compensation Board was ordered to hold a hearing on an application for an extension of time for the filing of an application for compensation. (Darling v. Criminal Injuries Compensation Board (1976), 11 OR(2d)766)

The Office of the Ombudsman then wrote to the Attorney General advising him of our intention to investigate this complaint. Subsequently, a second application by the complainant for an extension of time was rejected by the Board.

After this decision, the Ombudsman and the Director of Investigations met with the Chairman and the Vice-Chairman of

the Criminal Injuries Compensation Board. Following the Chairman's suggestion, our Office wrote to the Board asking for a statement of the reasons for the Board's decision not to exercise its discretion in this case. The reply indicated that the reason for its decision was that the application was uninvited and came six years after the incident in question.

The Ombudsman wrote to the Board recommending that it hold a hearing upon the complainant's application to extend the time for hearing her application for compensation. He indicated in his letter that he contemplated that such a hearing would entitle the complainant to call viva voce evidence to support her application. The Ombudsman also indicated his concern with the lack of publicity to increase the public awareness of the existence of the Board and invited representations by the Board on this issue.

In its response, the Board indicated that a decision would be forthcoming on the Ombudsman's recommendation and also advised that police officers are now instructed to advise victims of crime and their dependents of compensation legislation. The Chairman also pointed out that Crown Attorneys receive similar instructions and that information notices would now be posted in all hospital emergency rooms.

The Registrar of the Board later wrote to advise that the Board had agreed to afford to the complainant the opportunity of a viva voce hearing regarding the extension of the limitation period. Subsequently, the complainant's application for an extension of time was granted. A letter was received by our Office from the Director of the community law office involved stating:

"As you know, due to the painstaking efforts by your Office, the Criminal Injuries Compensation Board has agreed to extend the limitation period, so that the merits of our client's case can be considered ...

We appreciate your tremendous help in the matter which could not have gone this far without the commitment by your office."

In three other cases which were similar in nature to this one--in that the Board had decided not to disturb the one-year limitation period--the Ombudsman recommended that the Board hold a hearing upon the application of the complainants to extend the time for hearing their applications for compensation. These hearings would entitle the applicants to appear before the Board in order to call viva voce evidence to support their applications for an extension.

The Chairman of the Board informed the Ombudsman that, as a result of his recommendation with regard to one of these cases, the Board had decided to grant the complainant a viva voce hearing.

The Chairman subsequently notified the Ombudsman that with regard to the second and third cases, the Board had decided to by-pass a hearing on the matter of the extension as recommended by the Ombudsman and instead had granted the complainants a hearing upon the applications for compensation.

(5) SUMMARY OF COMPLAINT

This complainant approached the Office of the Ombudsman with a problem that arose when he served as a juror in a criminal matter some time earlier. On the way home from the court house, at the conclusion of the trial in which the defendant had been found guilty of a drug offence, the complainant was approached by an individual who was later joined by the defendant in the drug case. When court reconvened the following morning to try the defendant on another charge, the judge announced that an accusation had been made against the complainant, declared a mistrial and withdrew from the case. The complainant was advised by the judge to retain a lawyer as there might be serious charges against him.

In fact, no charges were laid against the complainant, but he incurred \$1,320 in legal expenses as a result of the incident. The complainant was compensated by the Ministry of the Attorney General for \$1,000 after he had appealed for special consideration given the unusual facts of the case. The complainant contended that he could not afford even the \$320 for which he had not been compensated, and that under the circumstances, he should be entitled to full compensation.

We wrote to the Deputy Attorney General outlining the complaint and indicated our intention to investigate this matter. Several telephone conversations took place between officials of the Attorney General's office and a member of our Research Directorate, but it appeared that the file in the Ministry of the Attorney General could not be located in its entirety. Subsequently, our Director of Research spoke with the Assistant to the General Manager in the Ministry of the Attorney General and was advised that the Ministry would shortly be issuing a cheque to the complainant for \$320. The complainant wrote to our Office upon receipt of the cheque in the amount of \$320 and expressed his gratitude for our assistance.

(6) SUMMARY OF COMPLAINT

This complainant approached our Office on behalf of his son who was confined to a psychiatric hospital on a Lieutenant-Governor's warrant.

The complainant's son had been charged with the offence of rape some eleven years previously. However, he was never brought to trial as he was considered unfit to stand trial as a result of his severe mental retardation. The complainant contended that evidence at his son's preliminary hearing indicated that his son could not have been the assailant in the crime in question. The complainant had obtained the opinion of a judge that a jury would not have convicted his son on the evidence as it stood. The complainant was concerned about having his son's name cleared and also about obtaining a transfer of his son to an institution which would be more appropriate to his son's particular disability.

Our Office wrote to the Attorney General to advise him of our intention to investigate this complaint. Discussions were held with members of our staff and Ministry officials, with the result that a letter was received from the Deputy Attorney General advising that he would propose that a stay of proceedings be directed in this case. The Deputy Attorney General advised our Office at the same time that the Ministry considered this case to be outside the jurisdiction of the Ombudsman, however, proceedings were in fact stayed. As a result, the Review Board of the psychiatric hospital where the complainant's son had been incarcerated approved his transfer to another institution for the mentally retarded.

MINISTRY OF

COLLEGES AND UNIVERSITIES

(7)

SUMMARY OF COMPLAINT

This complainant contacted the Ombudsman's Office to register his complaint against the Ontario Human Rights Commission, the Ministry of Colleges and Universities, a Royal Commission of Inquiry and an M.P.P.

In 1974, a professor was given a terminal contract for the academic year 1974-75 by a University College for a position in a certain department. In early 1975, the College invited applicants for one and possibly two probationary appointments in the same department.

Soon thereafter, the Committee on Appointments examined a number of candidates who applied in response to the College's advertisement. After consideration of the requirements, the Committee decided by a majority to accept a recommendation of the department that the same professor be selected to fill one of the probationary appointments listed in the department's submission. Later, the Academic Council, through secret ballot and by a majority vote, accepted the recommendation of the appointment of the professor. At this point, the matter was placed before the Principal (the complainant) who subsequently did not proceed with the professor's candidacy.

As a result, the professor submitted a complaint to the Ontario Human Rights Commission. He alleged discrimination in employment because of race, colour, nationality, ancestry and place of origin against the Principal and against the University College.

In September 1975, the Principal wrote to the professor offering him a terminal appointment as lecturer, effective September 1, 1975. That same month, the President of the College Faculty Association wrote on behalf of the Association to the Principal expressing dissatisfaction with his treatment of the professor. The President stated in part that it was:

"a serious breach of accepted University practice to substitute a terminal contract for an advertised probationary appointment in the absence of compelling reasons. Regardless of the nature of the reasons of the appointment, contracts at [the] College must run for 12 months."

The evidence suggested that the professor was supported in his case to the Ontario Human Rights Commission not only by the College Faculty Union, which had a vote on the Board of Governors, but also by another individual who was a former member of the Board of Governors which employed the complainant. In short, the complainant (the Principal) alleged that

he became caught in the 'cross-fire' of a running dispute between the individual who was a member of the Board of Governors and the Faculty Union on the one side and the rest of the Board of Governors on the other.

In light of the events taking place at the College, a Board of Inquiry under the Human Rights Code was established to inquire into and report upon the complaint made by the professor. Soon thereafter, the complainant also laid a complaint with the Ontario Human Rights Commission under section 5 of The Ontario Human Rights Code. He complained to the Commission that he was being retaliated against for being involved in the professor's human rights case. Specifically, his complaint to the Human Rights Commission under section 5 of the Code was against the individual who was a member of the Board of Governors with whom he signed a contract of employment.

Subsequent to the Principal registering his complaint with the Commission, the Chairman of the Board of Inquiry found that the professor was refused employment at the College by action of the Principal and by the authority of the Principal and the Chairman of the Board of Governors with the approval of the College, and this was contrary to section 4(1)(b) of The Ontario Human Rights Code. While the Chairman of the Board of Inquiry was reviewing the professor's human rights case, a Royal Commission of Inquiry on the College was established. This inquiry required a careful investigation of all aspects of the management of the College and consideration of its role in the City and the surrounding communities.

In view of the above events, the Principal complained to the Office of the Ombudsman that:

1. (a) the Ontario Human Rights Commission failed to fulfill the requirements of the Human Rights Code as specified under section 14(1) of the Code. He felt that he was eligible to complain to the Human Rights Commission under section 5 of the Code because his complaint was directed against the individual who was on the Board of Governors and who was his employer;
- (b) the Ontario Human Rights Commission delayed in responding to his letters of April 5 and May 5 1976;
- (c) the complainant claimed the then Community Relations Officer of the Ontario Human Rights Commission was biased against him because the Officer gave evidence against him in the professor's human rights case and the Officer rejected his eligibility to complain under section 5 of the Human Rights Code.

Further, the complainant submitted that the Commissioner for the Royal Commission of Inquiry into the College exceeded and abused his mandate when:

2. (a) he gave no indication that he was inquiring into the complainant's competence as an administrator and was contemplating his removal from office;
- (b) he subsequently recommended to the Lieutenant-Governor that the complainant be removed from office with no statement of cause;
- (c) he allegedly made public statements against the complainant which were not founded on fact that damaged the complainant's reputation and led to his removal from office;
- (d) in July, 1976, the Commissioner attended a private meeting with the complainant's employers where, together with an official of the Ministry of Colleges and Universities, he urged the complainant's dismissal.

The complainant also submitted that the Minister of Colleges and Universities abused his power when he:

3. (a) personally met with the complainant's employer, the Board of Directors at the College, and despite the Board's protestations, urged the Board to breach the complainant's contract and to dismiss him;
- (b) damaged the complainant's public reputation and career prospects when he called a press conference despite the complainant's protestations and announced that the Commissioner's recommendation for the Principal's removal would be followed;
- (c) deliberately established an artificial geographic limitation as a move to recruit a new Chief Executive Officer. The complainant alleged that this limitation was specifically set up so as to exclude his expressed candidacy to continue as Chief Executive Officer in direct contravention of the Human Rights Code, section 4(1) (a);
- (d) appointed another Chief Executive Officer, presumably in the complainant's place the day after he left for vacation and in so doing, breached the complainant's contract with the College;

- (e) made no attempt to notify the complainant about breaching his contract, removing him from his position and establishing an artificial geographic limitation.

The complainant also alleged:

- 4. That his M.P.P. ignored his letter in which he expressed fears that he would lose his job. He expected his member to speak on his behalf when the Royal Commission of Inquiry report was submitted to the Provincial Cabinet and to keep him informed of developments.

After the Ombudsman notified the Chairman of the Ontario Human Rights Commission of his intention to investigate this matter, an exhaustive investigation was carried out by members of our staff.

Our Investigator met with the then Community Relations Officer of the Ontario Human Rights Commission to discuss this complaint and the relevant documentation was obtained. The Investigator also spoke with the complainant on several occasions to acquire additional information. The Royal Commission's solicitor was also contacted with regard to this matter. In addition, extensive legal research was conducted into the issues raised by the complainant.

After assessing all the available documentation, the Ombudsman came to the conclusion that with respect to issue #1(a), the purpose of section 5 of The Ontario Human Rights Code is to protect complainants and witnesses from possible retaliation by their employers or landlords. The Ombudsman found that the individual who was a member of the Board of Governors and against whom the Principal complained, was no longer a member of that Board, the complainant's employer, at the time he notified the Human Rights Commission of his intention to complain under section 5 of the Code. Further, the Ombudsman noted that the Human Rights Commission acted in a responsible manner in dealing with the complainant's letters of April 5 and May 5, 1976. In addition, there was no evidence that the then Community Relations Officer was biased against the complainant.

The Ombudsman also determined that The Ombudsman Act, 1975 does not grant him jurisdiction over Royal Commissions appointed pursuant to The Public Inquiries Act, 1971, and therefore, he was unable to investigate the complainant's allegation of unfairness attributed to the Royal Commission.

Furthermore, the Ombudsman found that the complaint against the Minister of Colleges and Universities was unsupported. He determined that the Minister was acting pursuant to the

recommendations of the Royal Commission and these recommendations necessitated an agent of the Cabinet meeting with the Board of Directors to ascertain whether or not the Board would accept the Committee's recommendation voluntarily or whether it would be necessary to implement those recommendations by Order-in-Council.

In addition, the Minister did not damage the complainant's public reputation by announcing that the Commissioner's recommendation would be implemented. The Ombudsman found that it is reasonable that the findings of a Public Inquiry be made public, particularly when the community is greatly involved in an issue and since the findings have far reaching consequences for the community and its educational institution of higher learning.

The Ombudsman also determined that the Minister did not establish geographic limitations in recruiting a new Chief Executive Officer. The Ombudsman noted that it was the recommendation of the Royal Commission that the person to be appointed Chairman of the Board of Trustees was to be

"a person who has achieved distinction as an academic and as an administrator within the Ontario University system."

In regard to the complainant's allegation that the Minister breached the complainant's contract with the College by appointing another Chief Executive Officer, the Ombudsman found that the Minister was acting in pursuance of a recommendation by the Commissioner of the Royal Commission. The very fact that the Minister was the instrument through which the Commissioner's recommendations were implemented could not be reasonably taken to impute to the Minister any blameworthiness.

In addition, the Ombudsman determined that the complainant's contract with the College was a matter of private contract law and not within his jurisdiction to investigate.

With respect to the complainant's contention that the Minister did not notify him of the Commissioner's recommendations, the Ombudsman concluded that he had no jurisdiction to examine this issue as the Minister was acting as an agent of Cabinet and was carrying out the recommendation of the Royal Commission, which is a creature of Cabinet.

Finally, the Principal's complaint regarding his M.P.P. was at most an expression of dissatisfaction with the manner in which his M.P.P. treated one of his constituents. Since this did not relate to "any decision or recommendation made or any act done or omitted in the course of administration of a governmental organization" pursuant to section 15(1) of The Ombudsman Act, 1975, the Ombudsman determined that he did not have the authority to investigate this issue.

The complainant and the appropriate officials were advised of the Ombudsman's findings.

MINISTRY OF

COMMUNITY AND SOCIAL SERVICES

(8)

SUMMARY OF COMPLAINT

This complaint came to our Office through the complainant's M.P.P.

The complainant had been in receipt of Family Benefits. In the winter of 1975 his roof began to leak and he had to effect repairs quickly. He discussed this matter with his Family Benefits Field Worker who he alleged advised him to proceed with the work and submit his bill to the Provincial Benefits Director at which time it would be paid.

The complainant managed to borrow sufficient funds to purchase the repair materials which cost \$331.80 and with the assistance of his friends and neighbours, he effected the required repairs to the roof. In due course, the complainant submitted his account to the Director who denied him reimbursement. He appealed the Director's unfavourable decision to the Social Assistance Review Board but that Board also refused to approve the expenditure. The Deputy Minister was notified of our intention to investigate and replied that the Provincial Benefits Branch was not responsible for the costs the complainant incurred in repairing his roof. An investigation was conducted, the Ministry's files were examined and the complainant and others were interviewed.

The investigation indicated that the complainant's Field Worker and the Field Worker's immediate Supervisor both recommended strongly to the Director of Provincial Benefits that he exercise the discretion granted him under The Family Benefits Act to grant the complainant an amount of \$331.80 to pay him for the materials used in the repair of his roof. The Director of Provincial Benefits denied the complainant's request and this denial was confirmed on appeal to the Social Assistance Review Board. The reason given to the complainant for the denial was that he was a recipient of a Family Benefits allowance as extended by GAINS. Under the GAINS allowance, he was receiving \$314.74 monthly as compared to the amount he would have been receiving as a non-disabled person under Family Benefits, \$236.54. The Ministry felt that the \$78.20 difference was an adequate amount to enable him to pay off his repair debt.

It was our view that a possible recommendation could have been made to the Social Assistance Review Board that it reconsider and alter its decision to pay the complainant the amount claimed. Accordingly, a letter pursuant to Section 19(3) of The Ombudsman Act was sent to the Minister.

In his reply, the Minister indicated that he was satisfied that the Director of Provincial Benefits properly exercised his discretion under the appropriate Regulation of The Family Benefits Act in refusing the payment for the roofing repairs. The Minister reiterated the reasoning of the Director of Provincial Benefits that the \$78.20 difference which the complainant was receiving as a result of obtaining the GAINS entitlement was sufficient

to enable him to pay for the repairs.

The Minister's representations pursuant to section 19(3) were carefully considered. However, the Ombudsman was of the opinion that the representations should not alter the possible recommendation. Accordingly, a report pursuant to section 22(3) of The Ombudsman Act was prepared and forwarded to the Minister. The Report concluded that the decision of the Social Assistance Review Board was based on an error in principle since it compared the benefits received by the complainant as a result of a GAINS supplement to the amount the complainant would have received if he had been receiving an unsupplemented allowance. We found that the Social Assistance Review Board has the authority under The Family Benefits Act to reconsider and vary any decision made by it, and that the Board has the authority to refer the matter back to the Director for reconsideration in accordance with such direction as the Review Board considers proper under the Act.

Within three weeks of mailing the report to the Minister, we received a copy of an Order-in-Council approved by Her Honour the Lieutenant Governor authorizing that the complainant be paid \$331.80 pursuant to the recommendation of the Ombudsman.

(9) SUMMARY OF COMPLAINT

The complainant in this case was a member of the Armed Services of Canada. The substance of his complaint was the difficulty he and his wife were experiencing in adopting a child. These difficulties arose as a result of the residency requirements placed on prospective adoptive parents by the various provinces and the difficulty the complainant had in meeting these residency requirements as a result of his frequent posting from place to place in Canada. An application had been placed with a Children's Aid Society in a city in Ontario, in the hope that a child would soon be placed with them. However, the complainant had just learned that he was again about to be posted to another Province.

The law in this area was researched by our Legal Research Officer who learned that Section 75 of The Child Welfare Act provides for a residency period of six months, during which time a child who is being adopted must reside with the adoptive parents in the Province where the child is placed. This provides a period of supervision during which it can be determined whether the placement is in the best interest of the child. Section 81 of that Act permits a court to make an interim order of custody (but not adoption) upon the recommendation of the Director. Further, subsection 4 of section 81 specifically states that where an applicant has obtained an interim custody order and subsequently takes up residence outside Ontario, the court may nevertheless make the adopting order applied for if the Director makes a recommendation in favour of the order under Section 75. Our

Legal Research Officer contacted the office of the Director of Child Welfare to determine what its policy was with respect to such inter-provincial adoptions. She spoke with the Adoption Co-ordinator for the Province who advised that several alternative courses of action existed which would be open to the complainant to take. The Adoption Co-ordinator also offered to intercede with the Children's Aid Society involved to expedite matters for the complainant.

A letter was sent to the complainant and his wife advising them of the state of the existing legislation and the letter pointed out that this Office does not have jurisdiction to investigate complaints against individual Children's Aid Societies. However, we indicated that our Office would have jurisdiction to investigate complaints against the Director of Child Welfare. In this case, however, no complaint existed against the Director.

Nevertheless, the Ombudsman's informal intervention appeared to have been of some assistance to the complainant since shortly after our contact with the Adoption Co-ordinator, a child was placed with the complainants by the Children's Aid Society in question.

(10) SUMMARY OF COMPLAINT

The complainant's lawyer initially wrote to the Ombudsman in the summer of 1975 with the complaint that the matters of his client's grievances, suspension and dismissal in 1972 as an employee of the Ministry of Community and Social Services, were not properly dealt with by Ministry officials. It was further alleged that Ministry representatives did not act in accordance with The Public Service Act and regulations in their processing of these grievances.

The facts were as follows. Approximately nine months after the complainant had joined the permanent staff of the Ministry at one of its regional offices, his supervisor completed an evaluation report which was largely critical of his work performance and attitude. This report included the recommendation that the complainant's employment be terminated.

Subsequent to this, in June of 1972, the Deputy Minister's designate convened a hearing concerning the complainant's work performance. The complainant attended the hearing with his representative from the Civil Service Association (C.S.A.O.). After the complainant's supervisor appeared and gave evidence, the Chairman requested that additional information concerning the issue be gathered and submitted to him at a later date.

This report was completed in July, a month after which the Ministry's Director of Personnel notified the complainant that his annual salary increase was being deferred for six months and,

further, that he would be dismissed if his job performance did not show significant improvement in the near future.

Shortly after this, the complainant filed three working grievances, one of which concerned this deferral of his yearly merit increase and the Ministry thus became involved in the processing of these grievances as well.

Then, in September of 1972, after a senior official had met with the complainant in order to review his work performance, the Director of Personnel notified him that he was being suspended without pay on the grounds that his job performance had not improved and that he had failed to comply with his supervisor's requests.

The Deputy Minister's designate was then appointed to convene the hearing directed to the issue of the complainant's possible dismissal on October 4th, one day prior to the date scheduled for the hearing into his grievances. Consequently, at the dismissal hearing, the complainant's representative refused to proceed on the basis that he felt the grievances should have been scheduled to be heard prior to the dismissal hearing. After the representative indicated that he would consider a later hearing before the Public Service Grievance Board as a substitute, the Chairman adjourned the hearing.

The following day, the hearing into the complainant's grievances was held and, by letter of October 13th, 1972, the complainant was informed of the Chairman's finding disallowing all three of his grievances.

Shortly after this, the complainant was advised by the Deputy Minister of his dismissal from employment with the Ministry and that he could apply to the Public Service Grievance Board for a hearing if he felt his dismissal to be unjust.

Consequently, the complainant added the grievance of "unjust dismissal" to the three other working grievances he had already submitted to the Board.

The Board, after meeting to hear the evidence in late 1972 and early 1973, dismissed three of the grievances, including that of the alleged unjust dismissal. It did, however, uphold the grievance pertaining to the deferral of the complainant's merit increase.

In December of 1974, the complainant, through his counsel, brought an Application for Judicial Review in the Divisional Court requesting an order to quash the decision of the Public Service Grievance Board with respect to his grievances and dismissal.

Briefly, his position before the Court was that certain mandatory sections of the regulations to The Public Service Act had not been properly complied with by officials of the Ministry of Community and Social Services, and that consequently, the Public Service Grievance Board had lacked jurisdiction to hear

his grievances.

In reaching its conclusion that the Board had not lacked jurisdiction and that it had conducted its hearings properly, the Court emphasized that it had at the same time not formed any opinion as to the merits of the complainant's working grievances or of his grievance related to his dismissal since it was not within the Court's mandate to do so.

In its Reasons for Judgment, however, the Court did comment concerning certain defects within the Ministry's processing of the complainant's dismissal and grievances. The Court criticized the nature of the June 29th hearing, which hearing "was not completed properly", and whereby new information was gathered and included in a report without the complainant having had an opportunity to meet it in the course of the hearing. The Court also indicated that the then Deputy Minister's delegation to the individual who chaired the grievance hearing of October 5th was not a proper delegation in that the regulations require the Deputy Minister to act personally and in that this individual had had prior involvement in investigating the work performance of the complainant.

Subsequent to the hearings of the Divisional Court in December of 1974, the complainant brought an application for leave to appeal to the Court of Appeal which was refused. In July of 1975, the complainant through his counsel and his M.P.P. approached the Ombudsman.

Our investigation proceeded in the following manner. Members of our legal staff carefully reviewed all of the materials submitted by the complainant and on his behalf. It was concluded that it was within the jurisdiction of the Ombudsman to review the actions of officials of the Ministry preceding the filing of the complainant's grievances and also the manner in which these grievances were processed.

This decision was reached notwithstanding the fact that two properly constituted tribunals had considered different aspects of the complainant's situation. However, neither the Public Service Grievance Board nor the Divisional Court had directly considered the question of the alleged procedural deficiencies. Although the complainant had also requested that the Ombudsman review the matter of his dismissal, it was determined that this was not possible in that the dismissal had been the subject of a Cabinet decision, which decisions do not fall within the Ombudsman's jurisdiction.

Over the course of the next several months, discussions were held with the complainant and his counsel, as well as with various officials from the Ministry. In addition, all of the Ministry's relevant file material was reviewed.

From this information, it became apparent to the Ombudsman that there existed sufficient grounds for his making a report or recommendation which might adversely affect the Ministry and

certain of its officials. Accordingly, on February 18, 1977, pursuant to Section 19(3) of The Ombudsman Act, letters were sent to the Minister and Deputy Minister as well as to the other officials concerned inviting them to make representations concerning the possible conclusion and recommendation which the Ombudsman determined were open to him.

By letters dated April 29, 1977 and May 3, 1977, the two lawyers representing the Ministry officials provided their positions on the matter with an explanation concerning the officials' actions.

The Ombudsman, after considering these representations and additional information gathered by his staff, sent a 25-page report to the Minister of Community and Social Services. In this report, the Ombudsman stated his conclusion that the hearing of June 29, 1972, was not properly conducted in that further information was gathered concerning the complainant's job performance at the request of the Chairman, which information was considered at a later date by senior officials with the result that the complainant's merit increase was deferred. In effect, this punitive action was taken on the basis of information that was gathered and considered subsequent to the hearing of June 29, which information the complainant was not afforded an opportunity to rebut.

With regard to the scheduling of the hearings on October 4th and 5th, 1972, the Ombudsman concluded that he did not find the scheduling of the dismissal hearing prior to the grievance hearing to be "unreasonable" in that these dates had been confirmed with the complainant's representative.

However, the Ombudsman did conclude with respect to the October 5th hearing that the then Deputy Minister erred in his authorization of the Chairman for the hearing in that this person had already had substantial involvement with the review of the complainant's job performance prior to the hearing; and in that the Deputy Minister did not have the authority to delegate his duties in this regard pursuant to Section 58 of Regulation 749.

The Ombudsman emphasized that in reaching his conclusions, his overall concern with the Ministry's procedures had been that a Ministry must always ensure the provision of procedural safeguards and the inherent fairness of such procedures. In addition, he stressed the individual's right to expect and to receive a fair and just hearing at all levels of administrative and judicial proceedings.

Consequently, and in view of his finding that the complainant had indeed been exposed to certain procedural defects on the part of certain Ministry representatives, the Ombudsman recommended to the Minister that a letter be sent to the complainant "serving to acknowledge these procedural shortcomings; expressing regret therefor; and including an explanation of the recent legislative and policy amendments which tend to minimize the possibility of the recurrence of

problems similar to those which arose in this case."

With respect to the issue of possible compensation, the Ombudsman indicated that after having considered the submission made to him by the complainant's lawyer, he was of the opinion that such a recommendation was not warranted in that the deficiencies inherent in the Ministry's procedures could not be causally linked to the complainant's dismissal nor to the losses he alleged that he had suffered as the result of his dismissal.

With respect to the Deputy Minister's improper delegation of his authority to chair the Section 58 hearing, the Ombudsman recommended that Section 58 of the regulations to The Public Service Act be amended to allow the Deputy Minister to delegate his/her responsibilities. This was based on the understanding that if Deputy Ministers were not permitted to delegate their responsibilities under this Section, they could in actuality end up convening hearings for the majority of their working hours.

In his reply, the Minister of Community and Social Services advised that he would be referring the Ombudsman's report and recommendation concerning Section 58 of the regulation to The Public Service Act to the Chairman of the Management Board of Cabinet who administers that Act.

With respect to the Ombudsman's other recommendation, the Minister stated as follows:

"You have recommended also that the Ministry should address a letter to [the complainant] serving to acknowledge procedural shortcomings; expressing regret therefor and explaining recent and relevant legislative and policy amendments. I am afraid that I am unable to follow this recommendation in view of the fact that this matter proceeded to a lengthy hearing in the Divisional Court and the procedural shortcomings have already been commented upon in the Court and elsewhere."

The Ombudsman informed the Minister by letter that in accordance with Section 22(4) and (5) of The Ombudsman Act, he proposed to submit a copy of his report and recommendation to the Premier.

The Ombudsman subsequently sent a copy of his report to the Premier and asked him to give favourable consideration to the acceptance of his report and its recommendations.

The Premier responded that he had asked the Minister and his staff to carefully review the matter, the results of which review, he stated, were as follows:

"Ministry officials and the Minister himself remain convinced that all Ministry officials involved in this case acted in good faith, (went to considerable trouble to be absolutely

fair to (the complainant) and made every effort to afford him all his rights and privileges through appropriate appeal channels, as they existed at that time, and as were afforded to other public servants. To send a letter of apology acknowledging that there was any departure from this procedure would not only be tantamount to acknowledging an error, which they sincerely maintain does not exist, but could at this date take on added significance and be used by the complainant in a manner completely out of proportion to the intent of your office . . . the Minsitry has been unable to alter its previous decision."

MINISTRY OF

CONSUMER AND COMMERCIAL RELATIONS

(11)

SUMMARY OF COMPLAINT

This complainant wrote our office with regard to an Order of the Residential Premises Rent Review Board following a hearing. The Order of the Board affirmed the Order of the Rent Review Officer who approved a rental increase from \$219 to \$263 per month and an increase from \$10 to \$15 per month for parking. The complainant contended that her landlord appeared at this hearing, but did not come prepared with any documentation to support his projected increases in the forthcoming year. She also indicated that the landlord arrived late, then walked out of the hearing before it had been concluded. The complainant submitted that, although the tenants present at the hearing were given the opportunity to speak, they were told that their evidence could not really be considered in the absence of the landlord. The complainant felt that the tenants were unfairly denied an opportunity to put forth their case, and that the landlord's projected cost increases should have been more carefully scrutinized to ensure their accuracy.

During our investigation, a member of our staff met with the Registrar and the Assistant Registrar of the Residential Premises Rent Review Board, who both expressed concern about the manner in which this hearing had been handled.

The Board members' notes indicated that there was a high degree of animosity between the landlord and the tenants, and that the landlord was extremely ill-prepared for the hearing. The notes further suggested that although the tenants were given the opportunity to speak, their claims could not really be argued.

In accordance with Section 19(3) of our Act, a letter was sent to the Chairman of the Residential Premises Rent Review Board outlining our possible conclusions in this case, which were as follows:

1. The Board should have given greater consideration to the evidence put forth by the tenants, despite the landlord's absence. The Board exercised its discretion improperly in deciding that it would give no weight to the tenant's evidence in the absence of the landlord.
2. The Board exercised its discretion improperly in making an Order based entirely on the adjusted worksheet, as the landlord did not provide any documentation whatsoever to support these costs.

We further advised the Chairman of our possible recommendations, which were:

1. In the event that the complainant decides to apply for judicial review, the Residential Premises Rent

Review Board should not oppose such an application.

2. In the event of judicial review, it may be recommended that the Residential Premises Rent Review Board agree to an Order that the complainant's costs be paid on a solicitor and client basis.

The Chairman was given the opportunity to make representations to our office with respect to the above-noted possible conclusions and recommendations.

We received a letter from the Chairman which indicated that he agreed that the hearing was unsatisfactory. He further stated that the Residential Premises Rent Review Board would, therefore, not oppose an application for judicial review, nor an Order for payment of the legal costs of the applicant. The Chairman also indicated that the Board would further recommend to the Attorney General that an Order be issued with respect to this matter on consent. As the Chairman had agreed to all possible conclusions and recommendations made, a final reporting letter confirming these conclusions and recommendations was sent.

The complainant was informed by letter of the results of our investigation and the Chairman's agreement with our recommendation. She was further advised that she should discuss the matter of judicial review with her lawyer and then decide upon a course of action. After consultation with her lawyer, the complainant advised us that as she had now moved out of the building, she did not feel it was worthwhile to apply for judicial review.

(12) SUMMARY OF COMPLAINT

This complainant and his wife entered into an agreement to purchase a particular property. After the transfer was concluded, it appeared that the grant was void due to a technical defect. The complainant contended that the abstracting methods of a provincial Registry Office were ambiguous and misleading with respect to this particular parcel of property and that this prevented the complainant's solicitor from becoming aware of the factor which had the effect of making the transfer void.

A letter was sent by our Office to the Ministry of Consumer and Commercial Relations advising it of our intention to investigate this complaint. Subsequently, a meeting was held between our Investigator, the Executive Director of the Property Rights Division of the Ministry and a solicitor with the Legal and Survey Standards Branch. Ministry files were reviewed and correspondence was exchanged with the Ministry.

In an attempt to resolve the dilemma in which the complainant found himself, our Office wrote to the Minister of Housing to seek his approval for an Order validating the transfer of the property under section 29a(1) of The Planning Act. The Minister of Housing responded, agreeing to such an Order should the municipality agree to take the steps available to it under the legislation. However, the municipality in question declined to pass the necessary bylaw which would have cleared the way for the ministerial Order.

Subsequently, a letter was sent to the Ministry, advising it that our Office considered that there may be sufficient grounds for the Ombudsman making a report or a recommendation that might adversely affect the Ministry, and offering it an opportunity to make representations to our Office on the issues in question. Our Office had arrived at the following possible conclusion: that the practice that was followed in the Registry Office in question regarding abstracting methods was wrong and that the complainant may have been misled as a result.

In our letter we advised that a possible recommendation to the Ministry might be that it bear the costs that the complainant had incurred as a result of the inadequate practice in the Registry Office. Shortly thereafter, we received a letter from the solicitor who had acted for the complainant, advising that he had not at any time conducted a search or sub-search of the property, as he had not been instructed to do so. The solicitor had similarly informed the Ministry, and as a result, the Deputy Minister wrote to us to advise that the Ministry did not intend to make any further representations to our Office. The Ministry took the position that, as the solicitor had not conducted a search, it was not possible that the complainant could have been prejudiced by the abstracting methods used in the Registry Office.

The Ombudsman concluded that he could not support the complaint against the Ministry on the ground that, no search having been conducted, it was impossible to say that the Ministry was responsible for the defect in title. The Ministry and complainant were advised of this conclusion.

(13) SUMMARY OF COMPLAINT

This complainant contacted us regarding the decision of the Ministry of Consumer and Commercial Relations to suspend her driver's licence as a result of a payment made from the Motor Vehicle Accident Claims Fund pursuant to a judgment against her for damages arising out of an automobile accident.

The complainant had been the owner of a car which, while being driven by another person with the consent of the owner, was involved in an accident. The car was not insured and notice of the action had been given to the Motor Vehicle Accident Claims Branch. The Ministry appointed a lawyer to represent

the two defendants to the action who were the driver of the complainant's car and the complainant. The result was a judgment against both defendants. The complainant was also critical of the representation she had received by the lawyer appointed by the Ministry.

As a result of Section 15(4) (b) of The Ombudsman Act, the Ombudsman is precluded from investigating the actions of any person "acting as counsel to the Crown in relation to any proceedings." Therefore, it was not open to our Office to consider whether the lawyer in question had acted properly or not. Even if the lawyer appointed was acting not for the Crown, but for the complainant, the Ombudsman would have no jurisdiction as the lawyer would not be a "governmental organization".

Legal research revealed that once a judgment is obtained against an uninsured individual, The Motor Vehicle Accident Claims Act requires the Minister to pay out of the Fund to the plaintiff and to suspend the driver's licences of the defendants (now the judgment debtors), until such time as the Fund is either repaid or arrangements have been made for repayment. Accordingly, in the complainant's case, the Minister had no discretion to exercise and was obliged to take the action complained of.

Discussions with Ministry officials including the Director of the Motor Vehicle Accident Claims Branch revealed that no action had been taken against the complainant except to suspend her driver's licence. As this was what the Minister was required to do by legislation, which did not appear to be unreasonable in itself, the Ombudsman was not able to support the complaint against the Ministry.

It was suggested to the complainant that if she was dissatisfied with the representation she received from her solicitor, she had open to her two courses of action. She could file a complaint with the Law Society of Upper Canada or she could institute civil proceedings against the solicitor on the basis of his alleged negligence. No conclusions were reached by our Office with respect to the lawyer's competence.

(14) SUMMARY OF COMPLAINT

This complainant expressed concern in a personal interview at our Toronto office that the renewal of his 3rd class stationary engineer licence was being unfairly denied by the Operating Engineers Branch of the Ministry of Consumer and Commercial Relations. The complainant explained that he had failed to renew his licence in 1972 and, accordingly, it was revoked by the Board of Examiners of the above-mentioned branch. He felt his licence should be automatically renewed.

At the time the licence lapsed, the complainant was incarcerated in a Correctional Centre. During this time, he wrote an official of the Branch concerning the licence and, sometime after his release, visited the aforementioned official in his office at which time he was advised to submit a resume of his employment activities since January, 1972, with a list of references as well as a completed application for certification.

The complainant refused to comply with this request alleging that the official was overstepping his authority in this matter. In February, 1976, he did submit a completed application. However, it was rejected because the required resume and references were not attached. In the fall of that year, the complainant presented his problem to our Office for consideration.

We determined that one of the reasons he was reluctant to submit a resume of his activities between 1972 and 1976 was that he would have to reveal his stay at a Correctional Centre and he felt this might be held against him.

During our investigation, the normal procedure and rationale for reinstating licences was discussed with the Chairman of the Board of Examiners and the Executive Director of the Branch. The Investigator learned that, in the interest of public safety, the Board requires an applicant who is seeking reinstatement to demonstrate to the Board that he is competent to perform the duties of a stationary engineer, especially when considerable time has lapsed since the loss of his licence.

If the Board had applied the law strictly, it could have required the complainant to rewrite the examination for the certificate of qualification.

However, this regulation is used only as a last resort since the certificate of qualification represents a person's livelihood and this formal procedure might inflict undue hardship on the affected person. The above-mentioned informal procedure can be exercised with a minimum amount of time involved and is viewed by the Board as a preferred route unless it determines from this informal review that rewriting the examination is necessary for recertification.

Although the complainant did not allege in his submission that the Board was withholding reinstatement because of the time he had spent in a Correctional Centre, this was a collateral issue which came up for discussion during a meeting with Ministry officials. The Chairman indicated that he knew the complainant had been in the institution because his application for reinstatement came from there. Not only was this fact not held against the complainant, but the Chairman contacted the Centre and received a good recommendation as to the complainant's work record during that time.

A perusal of the Ministry's file revealed that the application form submitted to the Operating Engineers Branch in February 1976, was incomplete. There was no resumé of his employment background and no list of references.

The Ombudsman concluded that the position taken by the Operating Engineers Branch was consistent and not unfair and arbitrary as the complainant had alleged. It was also in accordance with standard reinstatement procedure. As a result of this investigation, the Ombudsman supported the Ministry's position.

(15) SUMMARY OF COMPLAINT

These four complainants, all tenants of the same apartment building, contended in November, 1976, that they had been affected by an improper decision of the Residential Premises Rent Review Board.

In June, 1976, after their landlord had attempted to increase their rent, the complainants made an application for rent review before a Rent Review Officer. The Officer found in favour of the complainants and other tenants because, in part, the landlord had not complied with The Residential Premises Rent Review Act.

The landlord then appealed the Officer's decision to the Rent Review Board and in November, 1976, the Board overruled the Officer's decision. The Board found in favour of the landlord and allowed the rent increase.

Our Investigator found that the landlord had notified the tenants of his intention to increase the rent but had not followed the procedures required under the Act.

Instead, the landlord had sent notices of proposed rent increases to the tenants without notifying the Rent Review Officer in the region.

When the tenants applied to the Officer asking him to have the landlord justify the increase, the landlord was served with the proper notice, but he failed either to reduce the rent increase or file an application for rent review.

At that point, the tenants, under the Act, should have filed an application for an order declaring the proposed increase in rent null and void, but they did not do so.

Our investigation led us to conclude that both the Rent Review Officer and the Rent Review Board had exceeded their jurisdiction in hearing this matter as neither the tenants nor the landlord had followed the provisions of The Residential Premises Rent Review Act.

In December, 1976, we advised the Chairman of the Rent Review Board of our intention to investigate the tenant's complaint. The Chairman replied, in January, 1977, in part,

"Upon reviewing the file, it became clear that neither the landlord nor the tenant has complied with the procedures set out in the Act. Therefore, neither the Rent Review Officer nor the Board had jurisdiction in the legislation to rehear or review a matter once it has been issued. It, therefore, becomes apparent that the only remedy open to the tenants is to apply for judicial review to have the decision of the Board quashed."

In March, 1977, the Ombudsman recommended to the Minister of Consumer and Commercial Relation that the Ministry pay the legal costs of all parties involved in having the Officer's and the Board's orders quashed through judicial review.

The Ombudsman also recommended that The Residential Premises Rent Review Act be amended,

"to provide that the Board be empowered to reconsider any decision, order, declaration, or ruling made by it and vary, amend or revoke any such decision, order, declaration or ruling. If such a recommendation is acceptable to the Minister, I would suggest that it be made retroactive so that others finding themselves in circumstances similar to that of these complainants would not have to go to the expense of seeking judicial review."

In April, 1977, the Minister informed the Ombudsman that he had requested his staff to prepare amendments to the legislation which he believed would substantially deal with the procedural matters outlined by the Ombudsman.

The Residential Premises Rent Review Amendment Act, 1977, was subsequently passed by the Legislature and received Royal Assent on April 29, 1977, although the amendment did not go so far as the Ombudsman had recommended to the Minister.

With respect to legal costs involved in seeking a judicial review to quash the Officer's and the Board's rulings, the Minister said, in a letter dated July 8, 1977,

"As indicated in my letter of April 7, the Rent Review Board will not oppose an application for judicial review nor an order for payment of the legal costs of the applicants. The Board will further recommend to the Attorney General that an order be issued with respect to this matter on consent."

We subsequently advised the four complainants of the results of our investigation, and three of them indicated that they would proceed with judicial review. The fourth complainant was in the process of moving and decided not to become involved in the review process.

(16) SUMMARY OF COMPLAINT

The complainant wrote to our Office at the suggestion of his M.P.P. who also wrote to our Office shortly thereafter.

In late 1975, the complainant applied for a position within the Rent Review Programme. During an interview for the job, he revealed that he owned two small apartment buildings. Notwithstanding this fact, he was offered the position of Rent Review Officer by the Ministry of Housing on two conditions which he subsequently satisfied. One of these conditions was that the complainant transfer the management of his two buildings. Having been advised that he "had the job", the complainant submitted his resignation as a Real Estate Broker and Branch Manager of a Trust Company. After completing his training session, the complainant signed a contract appointing him to the unclassified service of the Ministry of Housing as a Rent Review Officer on January 30, 1976, the date the appointment was to terminate being December 31, 1976. He then prepared the local Rent Review Office for its formal opening in early 1976.

After working for two weeks, the complainant received a telephone call from the Project Director, Rent Review Implementation, Ministry of Consumer & Commercial Relations, as this Ministry had recently become responsible for the Rent Review Programme. The Project Director advised the complainant that the fact that the complainant retained ownership of the buildings was causing complications for the Ministry and the complainant would either have to divest himself of ownership of the buildings or the Project Director would contact the complainant's former employer to determine whether or not the complainant could be re-hired. The complainant rejected both alternatives. Later that evening, the Project Director telephoned the complainant and suggested that he enter into a "Blind Trust" arrangement. The complainant considered this suggestion along with other possibilities with his accountant and found the "Blind Trust" arrangement economically unfeasible and so advised the Project Director.

The complainant was asked the following week to attend in Toronto, at which time his services were terminated, which termination was confirmed by letter from the Project Director.

In early 1976, the Ombudsman notified the Deputy Minister of Consumer & Commercial Relations of his intention to investigate this matter. Subsequently, the Ombudsman gave such notice to the Deputy Minister of Housing as well.

During the course of this investigation, our Investigator met with representatives of the Ministries of Housing and Consumer & Commercial Relations.

After a careful examination of all the available evidence, the Ombudsman sent his report to the Deputy Ministers of both the Ministries of Consumer & Commercial Relations and Housing. The Ombudsman indicated that, while he fully appreciated the desire of the officials of the Ministry of Consumer & Commercial Relations who took over the operation of the Rent Review Programme from the Ministry of Housing to ensure that none of the Rent Review Officers be involved in a potential conflict of interest, nevertheless, it was unfortunate and regrettable that the officials of the Ministry of Housing who interviewed and offered the position of Rent Review Officer to the complainant did not make it a condition of his employment that he divest himself of ownership of the apartment buildings in question.

The Ombudsman concluded that the complainant had relied, to his detriment, on the Ministry of Housing's assurance that he had secured the position of Rent Review Officer, having resigned from a responsible position which he had held for some years.

Having met the conditions imposed by the Ministry of Housing and having assumed his duties, the complainant found himself confronted by a new set of ground rules which he found financially impossible to meet.

While the Ombudsman did not fault the Ministry of Consumer & Commercial Relations for terminating the complainant's employment as a result of his potential conflict of interest, he was nevertheless of the view that the complainant should have been adequately compensated when his services were terminated for the damages he sustained as a result of his detrimental reliance.

The Ombudsman was satisfied that the complainant had made continuous efforts to obtain suitable employment since his termination; however, his efforts had proved unsuccessful. Since he was of the opinion that the actions of both Ministries contributed equally to the complainant's problem, he recommended that the complainant be compensated from the date of his termination to the date of the report at the salary he had agreed to in addition to reasonable legal fees, and that both Ministries contribute equal amounts to the compensation recommended.

Finally, the Ombudsman noted that he was aware that notice had been served pursuant to the Proceedings Against the Crown Act by the complainant's solicitor. In view of this, the Ombudsman advised that in the event the Deputy Ministers were prepared to implement his recommendation, he intended to put the complainant to his election as to whether to accept the compensation which he had recommended in full and final satisfaction of all claims or in the alternative, to proceed with a court action.

Subsequently, the Deputy Minister of Consumer & Commercial Relations wrote to the Ombudsman. His reply constituted both

Ministries' response to the Ombudsman's report. The Deputy Minister stated his counsel's view was that the complainant's claim should be resolved by court action, especially in view of the fact that any unilateral action would prejudice the Government's claim under an existing insurance policy which covers claims such as the complainant's. He continued:

"if, as a result of counsel's opinion, some form of compromise with (the complainant) is indicated, then various counsel involved can presumably resolve the matter.

Personally, I am sympathetic to the position taken by you in your letter of July 6th. You may rest assured that I will have counsel instructed to have this matter resolved as quickly as possible."

At this time, the complainant's solicitor advised the Ombudsman's Investigator that in order to protect his client's interest, a Writ had been issued. Later, the Ombudsman and the then Director of Research, met with the complainant and his solicitor. The Ombudsman outlined to the two gentlemen the position of the Ministries in this matter and advised that if this action was not settled before it reached trial or resulted in a verdict unfavourable to the complainant, he was prepared to proceed with his recommendation and do his utmost to ensure that it was complied with. Following a meeting between the then Director of Research and representatives of the Legal Services Branch of the Ministries of Housing and Consumer & Commercial Relations, the Ombudsman sent a similar letter to the Deputy Ministers concerned. Copies of the Ombudsman's Report and a further status report were sent to the complainant, his M.P.P. and his lawyer.

In June, 1977, the Investigator was informed that the matter had been settled to the satisfaction of all concerned. The solicitors for the complainant wrote to the Ombudsman's Office stating in part:

"He (the complainant) has asked us to thank you for your assistance in this matter and particularly to convey his immediate satisfaction with the very impressive manner in which you handled this case."

Subsequently, the Ministry of Consumer & Commercial Relations, the Ministry of Housing and the M.P.P. were notified that the Ombudsman was terminating his involvement in this matter as the complainant's problem had been resolved.

MINISTRY OF

CORRECTIONAL SERVICES

(17)

SUMMARY OF COMPLAINT

These complainants, a husband and wife, were from a small Ontario town and ran a 'special rates' group home for juvenile wards and probationers of the Ministry of Correctional Services. Their main contentions were that although they had received information that the Ministry no longer planned to use their home, this fact had not been officially confirmed and, notwithstanding this fact, they felt that there was no justifiable reason for this action.

This complaint stemmed from an incident which occurred when the wife left her husband in charge of the four wards (three boys and one girl) for a weekend. The complainants stated to our Investigator that the wards decided to run away and the girl subsequently alleged that she had been indecently assaulted by the husband. It was confirmed that the wards were taken into protective custody by the Ministry and the husband was subsequently charged with indecent assault by the Ontario Provincial Police. The charge was laid following statements from the two oldest male wards that they had witnessed the indecent assault. Prior to the charge being heard in court, the two wards changed their statements stating that they had not viewed the alleged indecent assault. Accordingly, the Crown Attorney made the decision to withdraw the charge at the time of the preliminary hearing.

We informed the Ministry of our intention to investigate and after receiving the Ministry's reply, our Investigator spoke with representatives from the Ministry's Juvenile Division and Inspections and Standards Branch as well as senior officials of the Ontario Provincial Police. In addition, an examination was conducted of the documentation provided by the complainants and the Ministry relating to the operation of the group home. Statements made by all parties involved in the circumstances leading up to the charge of indecent assault were studied carefully, as were the facts of the case as disclosed by the investigation conducted by the Ontario Provincial Police and the Ministry.

Following an assessment of this information, it was the opinion of the Ombudsman that in the unusual circumstances of the case he did not intend to 'second guess' the Ministry and its judgement in the matter and therefore, he did not recommend that the Ministry reconsider its decision concerning the future use of the complainants' home as a 'special rates' group home. Since it was also determined that the complainants had never formally approached the Ministry regarding the non-utilization of their home, we suggested to them that they approach the Deputy Minister to request a formal meeting.

Following the Ministry's receipt of the Ombudsman's report, a meeting was arranged on the Ministry's initiative between the Executive Director of Juvenile Programs and the complainants.

A month after the Ombudsman's Report to the complainants they forwarded a letter voicing dissatisfaction with his findings, and requesting an interview. Accordingly, a meeting was arranged between the complainants, the Ombudsman and our office's Director of Institutional and Special Services. A number of issues were discussed during this meeting, the most important being the complainants' contention that the wards had been 'put up' to making the charge of indecent assault against the husband by the Senior Probation Officer involved in the case. The Ombudsman therefore made the decision to interview those of the wards who had given statements to the O.P.P. and could be located.

Under section 20 of The Ombudsman Act, authority was delegated to the Director of Institutional and Special Services to convene a hearing. One of the male wards and the female ward who was the alleged victim of the indecent assault were called to give evidence under oath. The hearings were recorded and the wards were asked whether they had been told to make the allegations against the husband by the Senior Probation Officer. Their evidence revealed that neither of the wards supported the complainants' contention. Accordingly, it was the Ombudsman's view that no further investigation into the concerns raised by the complainants was warranted and, further, that no fault whatsoever could be ascribed to the actions of the Ministry.

(18) SUMMARY OF COMPLAINT

This complainant wrote to us from a maximum-security correctional institution in Eastern Ontario requesting assistance in clarifying that he had never been convicted of any sexually related offences. When interviewed, he advised our Investigator that he had been erroneously labelled as a 'diddler' by fellow inmates during a previous term of incarceration and that this rumour had recurred. As a result, he was concerned for his personal safety. Our Investigator spoke with institutional staff who verified the complainant's story, and also examined his previous criminal record which confirmed that the complainant had not been convicted of any sexually related charges. A letter stating this fact was forwarded to the complainant under the signature of the Ombudsman.

Subsequently, a letter was received from the complainant advising us that our letter had been of great assistance to him in dealing with his fellow inmates.

(19) SUMMARY OF COMPLAINT

A fellow inmate wrote to us on behalf of this complainant, who is illiterate, from a maximum-security institution in Eastern Ontario regarding problems in obtaining a special diet. When interviewed, the complainant told our Investigator that he had grown up on a slaughter farm and became physically ill when eating meat. He stated that while he had been at a Regional Detention Centre prior to being transferred to the present facility, he had been receiving a special diet. This had not been continued following his transfer. Although he requested a special diet through the institution's doctor, it was not seen to be a medical problem. The complainant was advised to speak with the Superintendent but never did.

Our Investigator verified the complainant's story on a subsequent visit to the Regional Detention Centre and spoke with the Chief Psychologist and Superintendent of the Correctional Institution and suggested that possibly the complainant could be granted a special diet for psychological reasons. Our Investigator was subsequently advised by the Chief Psychologist that the complainant was granted a special diet.

(20) SUMMARY OF COMPLAINT

An inmate of an institution in Central Ontario requested our assistance with regard to obtaining several lost personal articles. The complainant explained that when he was transferred from an institution located in Eastern Ontario to the institution in which he is presently incarcerated, several personal items, such as photographs and letters, did not accompany him. In addition, the complainant pointed out that he was held for a period of two weeks at another facility prior to arriving at his present institution.

Our Investigator visited the complainant at the institution and examined the complainant's institutional file. According to the property sheets on file, it appeared that the articles in question might not have been forwarded by the transferring institution.

Our Investigator was later advised by the Admitting and Discharge Officer that the missing photographs were located and that he would be receiving these articles on that day. In

addition, the Deputy Superintendent indicated that institutional authorities would correspond with the two other transferring facilities in the hopes of obtaining the missing correspondence.

Our Investigator remained in contact with the Ministry officials and was subsequently advised by the Superintendent that the inmate's missing correspondence had arrived at the institution from the jail in which the inmate was incarcerated for a two-week period. From the list of articles contained in the package sent from the jail, it appeared to our Investigator that all the items mentioned by the complainant had been included.

(21) SUMMARY OF COMPLAINT

An inmate of an institution in Western Ontario requested our assistance in having his outstanding charges in Thunder Bay and Brantford dealt with in order that he might apply for a Temporary Absence Pass. The complainant also indicated in his letter that he would like an explanation of the rules and regulations applicable to inmate correspondence sent to such authorities as M.P.P.s or Ministers and why letters to these people were delayed while institutional authorities wrote covering letters.

Our Investigator visited the complainant at the institution with respect to his concerns. At that time, the complainant repeated his concerns and indicated that he had received a letter from his lawyer which stated that the Senior Crown Attorney was prepared to have his charges sent down to the Western area from Thunder Bay if the inmate wanted to plead guilty. The complainant indicated to our Investigator that he intended to plead guilty and had put in a request for Legal Aid to assist him in disposing of the charges. The complainant also said that he would like to deal with his breach of probation charge in Brantford himself.

During the interview, the complainant requested that our Investigator contact a Sergeant of a Police Fraud Squad in order that this officer may return to him, or to his parents, personal property which was being kept at the Police Station.

Subsequent to the conversation with the complainant, our Investigator contacted the Sergeant. According to the Sergeant, he had not received a letter from the complainant

with reference to his personal property but would check to see whether there was any documentation at the Station. The Sergeant indicated that the police had in their possession the complainant's briefcase, and since all charges in this locale had been heard he would authorize that this property be sent to the authorities at the institution in which the complainant was incarcerated.

With reference to the question of delayed outgoing mail, the complainant was advised of the appropriate Ministry regulations. Our Investigator also explained the possible delay of correspondence to such authorities as M.P.P.s or Ministers. (Regulation to MCS Act, Section 28, subsection 2, subsection 3.)

The complainant was advised by letter of the results of our inquiries. We were later advised by the complainant that all of his outstanding charges had been disposed of, that he had received his briefcase and wallet from the Police Department and now understood the regulations regarding inmate correspondence. The complainant expressed his thanks for our assistance in resolving his concerns to his satisfaction.

(22) SUMMARY OF COMPLAINT

This complainant wrote to us from an institution in Northern Ontario contending that he had been unfairly denied a Temporary Absence Pass (TAP) to visit his family. Our Investigator reviewed the complainant's background with him during an interview and noted that he had not earned the top level of Incentive Allowance during his term of incarceration. It was explained to the complainant that a TAP is an earned privilege and not a right.

Following the interview, the complainant's situation was discussed with the Superintendent and the TAP Supervisor. The complainant's institutional file was also examined and it was noted that he had been in custody for some nine months without having received a TAP. The Investigator suggested that perhaps the complainant could be considered for a pass should he achieve the highest level of incentive allowance. It was decided that the TAP Supervisor and the Investigator would interview the complainant together regarding his new application for a pass for an upcoming holiday weekend. The interview was held and the complainant reiterated his concerns about the denial of his previous pass applications and the reason why he felt he should be granted a TAP.

Two weeks later, our Investigator received a telephone call from the TAP Supervisor stating that the complainant had reached Grade 4 level, had been recommended for a pass by the staff members who had the most contact with him, and was to be released for five days during the holiday weekend.

(23) SUMMARY OF COMPLAINT

The complainant wrote to us from a maximum-security correctional institution in Eastern Ontario. He complained that he had been transferred from the psychiatric unit of a correctional institution in Western Ontario to the present facility where he claimed he was not receiving any psychiatric treatment. Further, the complainant threatened to commit suicide if he was not immediately transferred back and advised that he was in segregation for having made this threat known to the institutional authorities. Telephone contact was established with the institutional authorities who confirmed the complainant's information, but they advised that he had since been released from segregation having been assessed by the Chief Psychologist.

When interviewed, the complainant reiterated his request for a transfer.

Consultation by the Investigator with the institutional Chief Psychologist and a subsequent examination of the complainant's institutional file revealed that the complainant had, since 1959, some fourteen admissions to psychiatric facilities, and had in addition received psychiatric attention in a number of correctional facilities both provincial and federal. However, he was not certifiably mentally ill. It was felt that he was in need of long-term rehabilitation. The complainant had apparently been transferred to the institution in which he was located because he was not believed to be benefiting from the previous institution's program and because he had only approximately one year to serve.

After considering all the information obtained, it was felt that the decision of the authorities at the psychiatric unit to transfer the complainant was not unreasonable. It became apparent that the Ministry's decision to place the complainant in maximum-security stemmed from three main factors: (1) his need for protective custody which stemmed from fellow inmates' intolerance of the manifestations of his mental illness; (2) his threats to commit suicide which necessitated constant supervision; and (3) the lack of alternative accommodation to provide the needed care.

The complainant was subsequently advised by the Executive Officer for the Ministry that arrangements had been made for him to be interviewed by the psychiatrist who visited the institution.

Due to our concern for this complainant's emotional condition and his threat to commit suicide, a telephone

call was made to the Deputy Superintendent of the facility alerting him to the pending receipt of our letter by the complainant advising him of the Ombudsman's decision. The Deputy Superintendent assured us that the inmate would be carefully supervised in the event that receipt of the Ombudsman's letter might upset him.

(24) SUMMARY OF COMPLAINT

This complainant wrote to us from a maximum-security correctional institution in Eastern Ontario to complain that he had been unjustly labelled as a protective custody inmate during a previous term of incarceration in 1974. When interviewed by our Investigator, he contended that upon reincarceration after violation of an Ontario Parole, he had been unfairly classified for maximum-security.

Our Investigator determined that the complainant had been returned to custody after violating his Ontario Parole for offences of a non-violent nature. She then approached Senior Officials of the Ministry to question why the complainant's classification had been changed, since he had been released on parole from a minimum-security institution in Northern Ontario. Our Investigator was subsequently advised that the classification had been reconsidered and that two days following the initial approach to the Ministry, the complainant was transferred from the maximum-security facility to the minimum-security institution from which he had originally been released.

Subsequently the inmate asked our Investigator to ensure that the protective custody classification was removed from his institutional file, and he also wished us to help him obtain a formal apology from a correctional officer and the Ministry for his having been classified incorrectly.

An examination of the complainant's present and previous institutional files revealed that there were reports from a Northern Ontario Jail dated January, 1974, stating that the complainant had required protective custody because of threats by other inmates against him. In February, 1974, the complainant had signed a document requesting protective custody while at a correctional institution in Northern Ontario.

Although the complainant told our Investigator that he had documentary evidence to prove that his contentions were correct, he failed to provide the material. After consideration of the facts of this complaint, we determined that there had not been an administrative error by the Ministry and that the complainant had at one time requested protective custody.

(25) SUMMARY OF COMPLAINT

Several problems were brought to our attention in two letters written by the complainant, who was participating in the Temporary Absence Program in one of the Ministry's detention centres.

In her letters, the complainant raised three concerns. First, she complained that while she had written to the Ontario Parole Board concerning the status of her parole application, she had received no reply. Secondly, she was concerned that while she was allowed only one weekend leave per month, some male inmates were allowed to work and live at home during the week and stay at the centre only on weekends. She felt that this was unfair and discriminatory. Thirdly, she complained that authorities would not allow her to take enough money on her weekend leaves to cover the cost of her family's monthly rent.

Our Investigator interviewed the complainant at the detention centre, examined her institutional records and subsequently discussed her concerns with a senior staff member at the centre.

Concerning the status of her Ontario Parole application, our Investigator learned that the complainant's case had been considered by the Board two months previously and that it had been decided at that time that no action would be taken. The letter to which she referred was a request to the Board for a second hearing of her case. The complainant indicated that the Social Services Supervisor at the centre was looking into this matter for her but she had not been advised of the result. Our Investigator attempted to contact the Social Services Supervisor but learned that he was on vacation. A subsequent check with this individual revealed that a few days after our Investigator's visit, the complainant received a reply from the Board, indicating that her case had been reviewed in committee, and that the Board had decided not to alter the original decision. The complainant, who has been made aware of the Board's latest decision, was advised by us that this most recent decision of the Board did not prevent her from re-applying for a further review of her case at some time in the future.

Concerning what the complainant felt was discrimination in the granting of greater privileges to male inmates on work programs, our Investigator explained to the complainant that the men to which she referred were, in fact, inmates sentenced to intermittent sentences by the courts. It was further explained to the complainant that as these inmates were not participating in the TAP program, they were not subject to the same conditions as she was. The complainant indicated that she had been previously unaware of this difference.

With respect to the centre's handling of the money she earned while on TAP, the complainant was concerned that she was only allowed to carry a small amount of money with her on her weekend passes. She wished to be allowed to take enough money with her to pay her family's rent. She indicated that the centre's practice was to send cheques directly to her landlord but she was concerned that the landlord would learn of her present difficulties and that this would cause undue embarrassment to her family. Our Investigator discussed this problem with the centre's TAP Supervisor who explained that because the Ministry is legally accountable for managing the money earned by an inmate while serving sentence, it is necessary to restrict the amount of money available to the inmates to ensure that it is not used for unauthorized purposes. However, as the complainant's desire to have more money while on TAP related to her unhappiness with the method by which her rent was paid, the institutional authorities had earlier agreed to a compromise and the TAP Supervisor advised our Investigator that the rent cheques would now be sent to the complainant's husband, thus avoiding any possible embarrassment to the complainant's family. This issue was thus resolved to the satisfaction of the complainant.

(26) SUMMARY OF COMPLAINT

This complaint came to our attention when our Investigator was on a routine visit to a Northern Ontario correctional facility. A senior official gave our Investigator a sealed letter from the complainant addressed to the Ombudsman which indicated that the complainant was requesting a personal interview. As a result, the complainant was interviewed at that time.

The complainant expressed concern about the difficulty he was experiencing in having an outstanding charge brought to Ontario from another province. When he was admitted to the institution to serve a sentence for robbery, the complainant had outstanding drug-related charges in two other provinces. In September, 1976, he requested through the Superintendent that these charges be transferred to the jurisdiction where the institution was located. The complainant's intention was to clear his outstanding charges so that he might serve the sentences at that location. In addition to requesting the Superintendent's assistance, the complainant wrote directly to the police in the jurisdiction involved, requesting that his charges be transferred.

In April, 1977, one of the jurisdictions acceded to his request. The complainant pleaded guilty to the charge and

received a sentence of four months consecutive to time being served. At the time of the interview in May, 1977, the complainant had received no indication from the other jurisdiction as to what course of action, if any, it proposed to take with respect to his outstanding charge. The complainant, whose sentence did not expire until March, 1978, was concerned that the presence of this outstanding charge would have an adverse effect on his chances for parole and temporary absence passes.

At the time of the interview, our Investigator advised the complainant that his concern was outside the jurisdiction of the Office of the Ombudsman. Section 15(4)(b) of The Ombudsman Act, 1975, states:

"Nothing in this Act empowers the Ombudsman to investigate any decision, recommendation, act or omission,

(b) of any person acting as legal adviser to the Crown in relation to any proceedings."

It was explained to the complainant that the transferring of criminal charges from one jurisdiction to another falls within the responsibility of the Crown Attorney in the location where the charge arose. Furthermore the Crown Attorney concerned in this case was a Crown Attorney in another Province.

The complainant was further advised that at the present time there is no obligation on the part of a Crown Attorney to transfer charges to another jurisdiction for a guilty plea. Therefore, the complainant was advised that he could best pursue this matter through the Superintendent and the Ontario Ministry of the Attorney General.

Although it appeared that the Ombudsman had no jurisdiction in the matter, our Investigator spoke with the Superintendent and reviewed the inmate's institutional record to confirm details of his complaint and to determine what action, if any, had been initiated on his behalf. Our Investigator learned that the institutional authorities had processed the complainant's request for transfer of the outstanding charges to the Ministry of the Attorney General in September, 1976, as is normal procedure in such cases. One of the jurisdictions involved had responded by transferring their outstanding charge as was indicated by the complainant. However, no indication had been received from the other jurisdiction as to their intentions concerning the transfer of the other outstanding charge. A check of the complainant's institutional record and discussion with the Superintendent revealed that the complainant's institutional conduct had been good and that he had involved himself constructively in institutional programs.

In following up on this case, our Investigator subsequently contacted a senior official at the institution to determine the status of the complainant's outstanding charge.

We learned that in September, 1977, the complainant was transported back to the jurisdiction where the charge arose to stand trial and subsequently received a nine-month sentence on the charge. It was the official's understanding that the complainant would serve the remainder of his aggregate sentence in that province.

(27) SUMMARY OF COMPLAINT

This complainant was seen by one of our Investigators at the request of the Deputy Superintendent of the correctional institution where the complainant was an inmate. The complainant had also written a letter to the Ombudsman.

The complainant wished the assistance of the Ombudsman in obtaining a vegetarian diet. He had been a vegetarian by personal choice for five years, and had been allowed a vegetarian diet in a detention centre before his transfer to the correctional institution, where it was refused him.

Our Investigator got in touch with the Senior Dietitian and Consultant on dietary matters to the Health Care Services of the Ministry of Correctional Services. As a result of this contact, the Senior Dietitian re-issued the Ministry guidelines to all correctional institutions regarding vegetarian diets.

We subsequently learned that a little more than a month after he was seen by our Investigator, the complainant was put on a vegetarian diet. The decision to put him on a vegetarian diet was taken by the unit treatment staff, the Head Nurse, and the doctor at the institution, not on the basis of medical or religious grounds, but in an effort to aid in the process of his rehabilitation.

MINISTRY OF

EDUCATION

(28) SUMMARY OF COMPLAINT

The complainant had been a teacher in a public school, but he felt compelled to resign his position after legislation was passed giving teachers the right to strike. The complainant was a member of a religious organization the beliefs of which did not permit a member to belong to an organization which could compel him to go on strike. Prior to resigning, the complainant made inquiries regarding the possibility of obtaining an exemption from membership in the Teachers' Federation which was involved. He was advised that there was no provision for such an exemption under The School Boards and Teachers Collective Negotiations Act. As such a provision does exist in The Labour Relations Act for the benefit of members of trade unions, the complainant wrote to us regarding this apparent discrepancy between the two pieces of legislation.

After research was conducted by a Legal Research Officer, a letter was written to the Deputy Minister of Education informally drawing this matter to his attention for the purpose of obtaining his comments on this issue.

The Deputy Minister responded that no modification of the Acts in question was considered appropriate at this time. This was, he stated, due to the fact that neither the Ontario Teachers' Federation nor any of its affiliates can compel a member to go on strike. He advised that 'social pressure' was the only sanction which could be employed by such organizations.

The complainant was advised of the Deputy Minister's position and he replied requesting further clarification. On discussing the matter further with officials of a Federation affiliate, the Deputy Minister's position was confirmed. This information was communicated to the complainant.

The complainant indicated in a subsequent letter that, as a result of our assistance, the way now appeared open for him to once again teach in the public school system. He also posed some further related questions which were answered after discussion with an official of the Ontario Teachers' Federation.

The complainant stated in his final letter to our Office that:

"I wish to express sincere appreciation for the help you have already given me...From my experience with you, I conclude that you are doing a necessary work in an excellent way."

(29)

SUMMARY OF COMPLAINT

The complainant was the Treasurer of a school in a northern city which was registered with the Ministry of Community and Social Services as a day nursery. He wrote to us to object to a decision on the part of the Ministry of Education not to register the school as a private school. In the past, the school had been offering its services primarily to pre-school children, but was now contemplating expanding its services to older children. For this reason, it sought registration as a private school. The Ministry declined to register the school on the grounds that, prior to the registration, it was necessary for the school to have five school-age children in enrolment. It did not, in fact, have any school-age children enrolled.

The complainant took the position that the Ministry was interpreting the relevant provision in The Education Act incorrectly. He stated that the provision ought to be read as referring to a capacity for five or more children, rather than an actual enrolment of this number of children. He further stated that the Ministry's interpretation resulted in discrimination against small northern communities, in that a newly-established school in that region had a smaller population base upon which to draw.

The Ministry was advised of our intention to investigate the complaint and it replied confirming its interpretation of the section in question, section 1(1)(40) of The Education Act which reads:

"'Private school' means an institution at which instruction is provided at any time between the hours of 9:00 a.m. and 4:00 p.m. on any school day for five or more pupils who are of or over compulsory school age in any of the subjects of the elementary or secondary school courses of study and that it is not a school as defined in this section."

Legal research was conducted which concluded that the Ministry's interpretation of the section in question was a reasonable one. We concluded that the use of the word 'for' in the provision in question refers to a minimum limit rather than a capacity for enrolment. This was particularly so when considered along with the use of the present tense in the phrase 'is provided.' With respect to the complainant's contention that the Ministry's interpretation prejudices small northern communities, the Deputy Minister advised our Office that the complainant's school has an enrolment of over fifty pre-school children. We concluded that where there is a sufficient population base for this number of pre-school children, a minimum limit of five school-age children should not be very difficult to meet.

The complainant and the Ministry were advised of our conclusions in this matter.

(30)

SUMMARY OF COMPLAINT

This former teacher made his submission to us in writing stating that he was seeking our assistance in having his elementary and high school teaching certificates reinstated. He was primarily interested in knowing the reasons why the Certificate Review Advisory Committee and the Minister of Education, to whom he had appealed the initial decision of the Committee, had decided to refuse reinstatement. He felt that this knowledge would allow him to take whatever corrective rehabilitation was necessary to become eligible for reinstatement.

The complainant's original loss of certification resulted from a conviction on a charge of contributing to juvenile delinquency. The Judge recommended that the complainant receive psychiatric treatment but the complainant did not feel he required such help and did not follow the recommendation. He taught very briefly in Western Canada until authorities there learned he did not have a valid teaching certificate.

When he returned to Ontario, he undertook the requisite training for a high school teaching certificate and because he was registered under his legal name as designated on his birth certificate rather than his former common name, he was granted this certification. Approximately two years later, his high school teaching certificate was revoked when it was discovered that his first certificate had been revoked. Ministry policy was explained as being that when one certificate is revoked then all other teaching certificates granted by the province are also invalidated.

The complainant then took up a career in social work after acquiring the necessary academic credentials in 1968. However, in 1972, the complainant sought legal counsel to assist him in becoming reinstated as a teacher. His lawyer made representations before the Relations and Disciplines Committee of the Ontario Teachers' Federation in October, 1972. This body was approached because it had made the earlier recommendation to the Ministry that the complainant's teacher's certificate be revoked as a result of the charges against him. This Committee recommended to the O.T.F. that no further action be taken with regard to his reinstatement. The complainant appealed this decision to the Executive Committee of the O.T.F., in early February, 1973. As a result, this body recommended to the Minister of Education that the complainant's certificate

be reinstated. In May, 1973, the Ministry agreed to hold a review of the matter, and, as a result, it created the Certificate Review Advisory Committee which considered the complainant's request in March, 1974.

The Committee's mandate requires it to look closely and with great care into the activities, life-style and professional endeavours of each applicant from the time of cancellation of a certificate. With this in mind, it examines such documentation as letters of personal and professional reference, comments by employers, reports by psychiatrists and psychologists and written personal representations by those who might be in a position to comment about related areas of the applicant's life.

After hearing and reviewing all written submissions in the complainant's case, the Committee, in an unanimous decision, concluded in its report that, while there was doubt that the complainant would ever again become involved in an incident similar to the one for which he was charged, there was not enough positive evidence to justify a recommendation for reinstatement. It further concluded that the complainant suffered from a psychological impediment. (Although one of the psychiatrists who had seen the applicant during this period of time had also suggested that he seek therapy, the complainant once again did not follow this advice.)

The complainant's solicitor appealed to the Minister in early 1975 to reconsider his decision, but the Minister confirmed his original decision.

The complainant then approached our Office. The Ministry file was reviewed and the report of the Advisory Committee which contained the reasons for non-reinstatement was examined. Representations were made to the Minister that the complainant should have been given a clear statement of the reasons for the Committee's denial to reinstate him.

The Minister informed our Office that the complainant's lawyer had examined the Committee's report and it seemed reasonable to assume that, as a result of this action, the applicant would also be aware of the contents of the report as well as the reasons given for the decision reached. This was confirmed in a subsequent discussion with the complainant at which time he indicated that since these were the sole reasons presented by the Committee and the Ministry as an impediment towards reinstatement, he requested that our Office determine the adequacy of the reasons given.

Since one of the criteria considered by the Advisory Committee as the basis of its decision was psychological factors such as the complainant's ability to cope with personal crises and behaviour consistency and since some emphasis had been placed on the recommendation of a psychiatric report, the Ombudsman concluded that our investigation should include an independent psychiatric assessment. The complainant agreed to be examined over a two-month period by a psychiatrist and a clinical psychologist.

The reports which resulted from these sessions suggested that the complainant did, in fact, suffer from a psychological problem which would not make him a suitable candidate to return to teaching.

While acknowledging that the complainant manifested many desirable attributes such as superior intelligence, drive, a diversity of interests and abilities as well as a deep interest in young people, the consulting psychiatrist and psychologist recommended that the complainant seek psychiatric treatment. As a result, we did not feel we could support the complainant.

The Ombudsman advised the complainant that he could not support a recommendation to the Minister of Education that he be reinstated at this time. However, he noted that should the treatment be successful, our Office might later be in a position to recommend to the Minister that serious consideration be given to the reinstatement of his certificates.

We have recently learned that the complainant has approached a psychologist to undertake such treatment.

MINISTRY OF

ENERGY

(31)

SUMMARY OF COMPLAINT

This complaint was presented to our office by the solicitor for the complainant, who was a landlord. The complainant was concerned that he was being held responsible for the arrears of hydro charges accumulated by a former tenant which had resulted in a lien being placed against his property. His concern was that the state of legislation in the Province permitted this to occur and he raised the following three points: First, he objected to the fact that Ontario Hydro is able to place a lien under one of two Acts: The Public Utilities Act or The Power Corporation Act. The results of placing a lien under the two Acts differ depending on which Act is used. Furthermore, the complainant contended that Ontario Hydro ought to be required to give notice to a registered owner when it places a lien on his property for arrears of hydro charges. Finally, he suggested that Ontario Hydro ought to request a deposit from tenants in order that they might have a fund to draw from for any arrears which accumulate, thus avoiding an immediate approach to the owner of the property for payment of arrears.

The substance of this complaint was drawn to the attention of the Chairman of Ontario Hydro in a letter from our Office. In response, a letter was received from the General Manager of Regions and Marketing for Ontario Hydro dealing with the points raised by the complainant. The General Manager indicated that Ontario Hydro interprets the lien provision in The Power Corporation Act as being paramount to the comparable section of The Public Utilities Act, and that, therefore, Ontario Hydro relied only on the former section.

Regarding the general policy of Ontario Hydro for the recovery of arrears for hydro charges, the General Manager stated the following:

"...the underlying policy of Ontario Hydro with respect to the recovery of arrears of charges for electrical service is always to endeavour to collect such arrears from the persons who contracted for and used the service. Such collections are made by following normal collection procedures including two notices, a house call and legal action when necessary and appropriate.

In the case of a tenant who has vacated the premises it is usually necessary to obtain the assistance of his former landlord in tracing the whereabouts of the tenant in order for this policy to be effective. Resort to the tax roll provisions of section 74 is only used for tenant arrears in circumstances where it appears that a special relationship exists between the tenant and the owner such as to imply a definite responsibility on the part of the owner. For example, such a relationship may be implied where there is an owner-lessee agreement of a

nature similar to those used between service station operators and oil companies, where a husband and wife claim an owner-tenant relationship with the tenant as customer, or where the owner definitely refuses to co-operate in tracing a previous tenant. I should also mention that while Ontario Hydro is entitled to require a customer to give reasonable security for the payment of charges, it only resorts to this procedure in cases where, insofar as residential properties are concerned, the customer, whether an owner or a tenant, has a clearly demonstrated poor payment record. It is hardly surprising that customers resent being required to provide a deposit to guarantee payment of a bill. It is a reflection on their credit and denies them the use of some of their discretionary income. As a matter of policy, therefore, deposits are taken from residential customers only when it can be documented that they brought such treatment upon themselves."

In conclusion, the General Manager advised that when a final notice regarding arrears is sent to a customer who is a tenant, notification is also sent to the owner of the premises, provided that the latter is known to Ontario Hydro.

Our Director of Research wrote to the complainant through his solicitor to advise him of the response from Ontario Hydro. As no response was received to our letter, we assumed that the complainant was satisfied with the statement of Ontario Hydro's policy that our office had forwarded to him.

(32) SUMMARY OF COMPLAINT

This complaint was received at a private hearing in Northern Ontario. It concerned difficulties the complainant was experiencing with Ontario Hydro. Prior to submitting his complaint to our Office, the complainant had contacted his M.P.P. who intervened on his behalf with Ontario Hydro.

The complainant had applied for the extension of hydro service to his mobile home. He was advised by Ontario Hydro that, at best, if his mobile home met certain requirements, Ontario Hydro would provide 1,173 feet of line, leaving the complainant to finance the extension of 3,051 feet of line at an approximate cost of \$9,500. Alternatively, Ontario Hydro suggested that the complainant relocate his mobile home on a portion of his property closer to the existing hydro lines. The complainant contended that Ontario Hydro should provide service to his mobile home where it was located at that time. He also disputed Ontario Hydro's cost estimate.

We advised Ontario Hydro of the complainant's contentions and in response, Ontario Hydro outlined its rate system. It also advised that the complainant's plans kept changing and when Hydro's area manager last visited the complainant, he was still uncertain as to his plans. We were advised that based on the alternatives the complainant was considering, Ontario Hydro had left him with three proposals for his consideration. These proposals, outlined in Ontario Hydro's letter to us, were as follows:

"Alternative 1: If the mobile home trailer was installed to Ontario Hydro regulations, or a new house constructed, at a point on the property 0.3 miles from the line, Ontario Hydro would construct 0.22 miles (1,173 feet) and the balance would be covered by signing for approximately two guarantee units (\$12 per month). Should the customer not wish to pay for guarantee units, he could arrange for the construction of that portion of the line not covered by density himself, or arrange for Ontario Hydro to build it for him - in either case at his own expense.

Alternative 2: If the mobile home or new house was located near the barn, 0.55 miles from their line, the farm class would allow Ontario Hydro to build 0.33 miles and the balance would be covered by four guarantee units (\$24 per month).

Alternative 3: If a new house was constructed at the barn (6 density units) and the mobile home installed across the road on the other property for rental purposes (4 density units), then Ontario Hydro would construct the entire line."

The complainant was subsequently advised by our office of the proposals and we requested that he give us an indication of whether any of them were acceptable to him. The complainant advised us that a combination of alternatives 2 and 3 would be acceptable to him and he requested that we verify with Ontario Hydro whether the proposals were still in effect.

Our Investigator then met with Ontario Hydro officials in order to confirm their proposals. Following those discussions, it was confirmed that the complainant's request as outlined in his letter to us with respect to alternatives 2 and 3 was acceptable. The complainant was advised of the results of the Investigator's contacts and was also advised whom to contact with respect to the implementation of the proposals.

(33) SUMMARY OF COMPLAINT

This complaint originated through a written submission followed by a personal interview at one of our private hearings in Northwestern Ontario.

The complainant alleged that in the Fall of 1955, a representative of Ontario Hydro contacted him to negotiate the purchase of some of his land for future transmission line needs. Although he expressed a reluctance to sell, he did sign an Offer to Sell 1.5 acres for \$250. Since that date he contended that he had made several offers to repurchase the property because of his concern that, since it was not being used as intended, it might eventually be sold to a private business interest for commercial use, thereby affecting the value of and access to his home on an adjacent property.

Ontario Hydro had informed the complainant's M.P.P. by letter in 1970 that it was not interested in selling this surplus property to private industry for commercial use, however, in the event that the property was offered for sale, the complainant would be given the right of first refusal.

Ontario Hydro determined around the same time that although the majority of this property would be retained pending finalization of future transmission projects, one-half acre was designated surplus and offered to the complainant at a cost of \$500 on the condition that the complainant supply a plan of survey and pay any costs under The Planning Act.

The complainant maintained that Hydro's position in this matter was unfair and unreasonable and he claimed that he should only be required to pay one-third of the price for which he sold the 1½ acres to Hydro since he was, in fact, repurchasing only one-third of the property.

Our investigation revealed that both in 1957 and 1970, Ontario Hydro had based its prices on letters of opinion of value based on comparables calculated on the sales of other properties in the area and reflecting prevailing market values at the time.

The Ombudsman could not support the complainant's position because:

- 1) neither he nor our Office could find evidence to support the argument that he should today pay one-third of the selling price of \$250 in 1955. (The complainant had bought the same property for \$75 in 1954.)
- 2) the rise in land prices in the last 20 years could not be disputed.

Since Ontario Hydro was not interested in selling the lands except as outlined to the complainant and since it gave him the right of first refusal, our Office could not support his complaint.

SUMMARY OF COMPLAINT

The complainant, who represented a manufacturer and distributor of industrial and farm equipment, was interviewed by a member of the staff of our Rural, Agricultural and Municipal Services Directorate at our private hearings held in Southwestern Ontario.

The complaint against Ontario Hydro concerned that agency's refusal to advise the complainant of the name of the successful bidder on a supply contract for which the complainant had also tendered. After tenders had been called, the complainant had only been advised that his firm was unsuccessful. When he endeavoured to find out the name of the successful bidder and the reasons for granting the tender, he was advised that it was not the policy of Ontario Hydro to make such disclosures.

When we contacted Ontario Hydro, we were advised of the policies of that agency regarding the calling of tenders. There are two types of tenders called for, public and private. The complainant was involved in what is known as a private tender. These are tenders usually from selected suppliers on specific items such as vehicles or equipment. If the value is over \$10,000, the unsuccessful bidders are automatically advised in writing of the name of the successful bidder and the rationale for the decision. Actual prices are not released, but the unsuccessful bidders are usually advised that the tender was awarded due to the successful bidder having quoted a lower price.

In this particular case, the matter was in the \$20,000 range and Hydro officials indicated that the complainant should have been advised of the name of the successful bidder and the rationale for the decision.

We were subsequently able to advise the complainant of the name of the successful bidder and the rationale for Ontario Hydro's decision. At the request of Ontario Hydro, we also provided the complainant with the name of an individual in that agency who would be pleased to confirm our findings and also discuss Ontario Hydro's policy with the complainant. At the request of Ontario Hydro, we also passed on the agency's apology for any inconvenience which may have been experienced by the complainant.

We subsequently received a letter from the complainant expressing the firm's appreciation for our assistance with the problem.

MINISTRY OF

THE ENVIRONMENT

(35)

SUMMARY OF COMPLAINT

These complainants alleged that the Ministry installed a new sanitary sewer system in their area, adjacent to a Central Ontario town, during the spring and summer of 1976 and that, as a result, their well ran out of water on or about July 29, 1976, as did other wells, while some others became polluted.

The complainants stated that they contacted the contractor and then the Ministry. Representatives from the Ministry visited them and examined and tested their well. The Ministry explained by letter that the lack of water was not caused by the installation of the sanitary sewer system; however, the complainant stated that the Ministry had dug new wells for a number of residents.

The complainants also contended that the new town water line stopped about 500 yards from their property and that the Ministry was wrong when it claimed that their well was always poor.

The Ministry concluded that the sanitary sewer installation could not have had any effect on the performance of the well. A pump test on the well on September 14, 1976, showed that the well relied heavily on storage due to extremely slow recovery. The natural seasonal decline of water level would reduce the available storage. Evidence from residents indicated that the stream from which the water originated always acted this way and that the situation was unchanged from previous years.

Evidence indicated that the relative elevation between the well and the sewer installation showed that the bottom of the well was 10 feet lower than the sewer installation. As a result, the sewer installation was unlikely to have had any effect on the performance of the well. Neighbouring wells are situated along the bottom of the ravine passing immediately north of the complainants' property and since no water shortages were reported from those wells up to September 21, 1976, construction of a new well by the complainants would have provided sufficient water at nominal cost. It should be noted that the Ministry had taken corrective action in several cases where sewer construction affected the water supply.

Our investigation also revealed that work which might have affected the water supply was completed by December, 1975. The previous owners of the complainant's property stated that they had been careful with the use of water. They did not complain of any water shortage from December, 1975, until their departure in May, 1976.

Discussion with the utilities commission and the municipality indicated that steps were underway to provide town water to the area.

We were of the opinion that the sanitary sewer installation did not affect the complainants' supply and we were unable to find fault with the actions of the Ministry. Subsequent to receiving our report, the complainants wrote to the Ombudsman extending their appreciation for the time and trouble which the Office had spent on the complaint.

(36) SUMMARY OF COMPLAINT

This complaint came to our Office in June, 1977, from a French-speaking resident of Northern Ontario and was handled by the Director of Rural, Agricultural and Municipal Services Directorate which has responsibility for problems concerning Francophones.

The complainant contended that the Ministry was unnecessarily delaying payment for repairs his auto-body shop had performed on a Ministry vehicle in January, 1977.

Our Director immediately contacted a Ministry official by telephone concerning the six-month delay in payment and was informed that the payment had been delayed because of problems associated with processing an insurance claim. The Ministry assured our Office that special steps would be taken to pay the amount owed to the complainant.

Within two weeks of that contact, we received a letter from the complainant advising us that payment had been received from the Ministry.

MINISTRY OF

GOVERNMENT SERVICES

(37) SUMMARY OF COMPLAINT

The complainant contacted our office with a problem that his company had with the Ministry of Government Services.

In 1973, the complainant's company was notified that its tender for a certain contract which covered a two year period had been accepted. During the lifetime of this fixed-price contract, the minimum wage rate had been raised by 45¢, vacation pay had doubled and statutory holidays had increased by 4. As a result, the complainant contended that his company had lost a considerable amount of money. Consequently, the complainant submitted that his company ought to be compensated for increases in costs attributable to changes in The Employment Standards Act.

In addition, he was concerned with the interpretation of a particular clause contained in each of 10 other contracts that his company had subsequently entered into with the Ministry. The contracts in question were to be "fixed price" but in order to avoid the difficulties experienced in the previous contract, i.e. potential changes in legislation, the complainant submitted "flexible" bids. In other words, the complainant submitted his bids in the following way:

For services performed per man			
per hour during weekdays,	25		
Saturdays and Sundays...	<u>\$3./</u>	100 Dollars	<u>(\$3.25)</u>

For services performed per man			
per hour during seven (7)	1½ times minimum wage		
statutory holidays...	<u> </u> /100 Dollars		(<u> </u>)

Specifically, the complainant claimed that, in his original tender, he wrote a plus (+) sign before the phrase "1½ times minimum wage" with the understanding that for services performed per man per hour during statutory holidays his company would receive \$3.25 plus 1½ times the minimum wage.

It was ascertained that the agreement which was submitted to the complainant for approval contained an asterisk before the phrase in question. The intention was that the asterisk would signify a different wage for security guards on statutory holidays. However, with the asterisk present, the contract could be interpreted to mean that the company would only receive \$3.38 per man per hour during seven statutory holidays and not \$6.63 as the complainant submitted he intended.

The complainant contended that his company should be compensated for financial hardship resulting from the Ministry's erroneous interpretation of payment for security services performed on statutory holidays.

After a thorough investigation, which included several meetings and conversations with the complainant as well as with the Director of the Property Management Branch of the Ministry, and an examination of all pertinent documentation, the Ombudsman found that he did not have jurisdiction to investigate the complaint regarding adverse effects that changes in legislation had on the complainant's company because of Management Board of Cabinet's involvement. The substance of the complainant's problem under this contract was the subject matter of deliberations of the Management Board, a committee of The Executive Council. The Ombudsman concluded that section 14(b) of The Ombudsman Act, 1975, denied him jurisdiction to pursue this aspect of the complainant's difficulties.

Notwithstanding his lack of jurisdiction to investigate the circumstances of this particular contract, the Ombudsman found that the Ministry of Government Services had acted in a responsible manner in view of Government policy which stipulated that contracts were not to be renegotiated.

The Ombudsman noted that the auditors from the Ministry examined the financial records of the company for this contract and for non-governmental contracts. It was established from the audit that the complainant's business was not suffering actual financial hardship due to amendments to The Employment Standards Act. In fact, the government auditors' statement demonstrated that the company realized a profit from the government contract.

In addition, the Ministry made concessions to the company by allowing it to terminate its contract two months prior to the expiry date.

With respect to the other ten contracts, the Ombudsman found the complainant's contention to be unsupported.

From the data accumulated, it was evident that the complainant submitted tenders without a plus (+) sign before the phrase "1½ times the minimum wage".

Further, the Assistant Director of the Property Management Branch of the Ministry had asked the Chief Inspector of the complainant's company for clarification of the phrase in question prior to the agreement being reached. Although the complainant claimed that the Chief Inspector was not an Officer of the company and did not have the authority to act as a representative of the company, the Ombudsman determined that the Ministry could rely on the information provided by the Chief Inspector as he wrote to the Ministry on company stationery and signed his name "per [complainant's name]". In addition to taking

into consideration the information furnished by the Chief Inspector, the Ombudsman noted that the complainant had signed the pertinent agreements with the Province of Ontario represented by the Ministry in such a manner that he agreed to accept "1½ times the minimum wage rate" and not "\$3.25 plus 1½ times the minimum wage rate" for services performed per man per hour during statutory holidays.

Subsequently, the Ministry, the complainant and his M.P.P. were advised of the Ombudsman's findings.

(38) SUMMARY OF COMPLAINT

The complainants owned a parcel of land in Southern Ontario consisting of several acres. In June 1974, an Offer to Purchase from one of the complainants was accepted for the land, the zoning of which was industrial. Soon thereafter the land was purchased with a transaction completion date of March 1975. In 1975, three separate offers to purchase part of the lands north of an existing railway and on the north side of the proposed road were accepted at a considerable amount of money per acre subject to obtaining severances. The offers were each for five acre parcels. In February 1975, the Regional Municipality granted a severance of a 10 acre parcel of the lands bordering the railway line.

Prior to completing this transaction, the solicitors for the complainants obtained a letter from an employee of the Ministry stating that the lands were not to be included in the Parkway Belt. They also confirmed by letter a conversation with another employee of the Ministry that if a hydro corridor were to run through the lands, the Ministry would, at the owners' option, acquire all the lands and that the purchase price would be based on fair market value at the date of purchase, having regard to the industrial zoning and development potential. At the end of March, 1975, the purchase of the lands was completed. In April, 1975, a public meeting was held with Hydro officials wherein they advised that a hydro corridor was to pass through the lands. In May, 1975, the Ministry of Government Services made an offer at a price per acre which the complainants considered to be low, because the appraisal ignored the development potential of the land. Soon thereafter, a Ministerial freeze order was made, placing the lands in the Parkway Belt.

Subsequently, in early 1976, a Notice of Application for Approval to Expropriate the 10 acre portion of the lands in fee simple and to expropriate a number of acres for an easement was served upon the owners. The balance of the lands being totally in the

Parkway Belt and zoned agricultural at this point were worthless in the complainants' opinion. The complainants contended that the actions of the representatives of the Ministry placed them in an untenable position. They owned land which had been down-zoned to agricultural by the Ministerial freeze order.

They claimed that representatives of the Ministry threatened that if the lands were not offered for sale prior to expropriation at the price it was willing to pay, which was approximately the same price the complainants had paid without any recognition of carrying costs, developing costs or legal costs, then the land would be taken, part in fee simple, part for an easement and part untouched. If this were to happen, the solicitors on behalf of the complainants contended their clients would be left with a parcel of land that was not capable of being developed and part of which was blanketed by a wide easement. If a settlement was reached at the price the Government was offering, the complainants contended they would suffer a substantial loss.

After the Ombudsman notified the Deputy Minister of his intention to investigate this complaint, our Investigator spoke with the solicitors for the complainants on several occasions to acquire further information. The Investigator also met with the Director of the Realty Services Branch, the Assistant Director in charge of Property Acquisitions and Sales, and the Chief Negotiator of the Ministry to review this matter. The Investigator learned that the Ministry was now considering a proposal to purchase the complainants' holdings in total.

Subsequently, the Office of the Ombudsman received a letter from the solicitors for the complainants advising that the Ministry had agreed to acquire all the subject property and this was done without prejudice to the land-owner claiming further compensation before the Land Compensation Board. The solicitors added that:

"I am confident that the Ombudsman's involvement in this matter was instrumental in the Government's change of heart. Please convey to Mr. Maloney our sincere thanks on behalf of ourselves and our clients."

In view of the above, the Ombudsman terminated his involvement in the matter as the complainants' problem had been resolved.

MINISTRY OF

HEALTH

(39)

SUMMARY OF COMPLAINT

The complainant, a 44 year old, blind physiotherapist from a Western Ontario city, contacted our Office with a complaint against the Ministry of Health.

The complainant, a licensed and practising physiotherapist for the past 22 years, advised us that he had applied on an annual basis since 1967 to the Ontario Health Insurance Plan (OHIP) for insured coverage of his physiotherapy clinic. He indicated that his application had been consistently denied by the Ministry on the ground that OHIP coverage was closed to all physiotherapy practices except those in "under-serviced areas," such as the remote areas of the Province.

The complainant felt that the Ministry should consider approval of applications to operate private physiotherapy practices under OHIP from totally blind physiotherapists who are native to Ontario. He felt that it was becoming increasingly difficult for blind physiotherapists to compete with sighted staff in most hospital settings and for them to realize their professional potential and opportunities for advancement.

It was also the complainant's contention that a small private practice allows a blind physiotherapist to control his working environment and to function more efficiently. He had operated a private physiotherapy practice in a Western Ontario city, without the benefit of OHIP coverage for the last nine years. As this was his only employment, he felt that his record demonstrated both the acceptance of the medical profession and the community.

The Ministry's position was that problems could arise from treating the complainant any differently than other physiotherapists and that on the basis of relative need, the city in which the complainant practised physiotherapy was not a locality in which the Ministry would choose to aid a private physiotherapy facility at present because, according to Ministry statistics, the city was "adequately serviced."

During our investigation, we were advised that there were 19 blind physiotherapists licensed to practise in Ontario. Thirteen of the blind physiotherapists were employed in hospitals for which their services are billed through OHIP. Two other physiotherapists worked in hospitals in addition to working in OHIP "approved facilities" under The Health Insurance Act. The one blind physiotherapist who had been operating his own clinic for nine years without any assistance from OHIP was the complainant.

Prior to reaching any final conclusions, we again approached the Ministry with the above information to inquire as to whether it would be prepared to reconsider the complainant's application. The Ministry did not wish to do so.

We then submitted our final report to the Deputy Minister in which we indicated that we were of the opinion that the complainant's case was exceptional and unique and deserved to be judged on its own merits despite the Ministry's concern about making exceptions.

It was our recommendation that the blind physiotherapist should have his application approved for OHIP coverage under Part 1, Schedule 9, of The Health Insurance Act as soon as possible.

The Deputy Minister subsequently responded to our recommendation and stated that, having reviewed the special circumstances of the complainant's case and also having regard to the consequences of making an exception, he was prepared to approve the complainant's case under The Health Insurance Act if the complainant would be prepared to relocate and set up a physiotherapy practice in any one of five communities listed by the Ministry which, according to its statistics, required physiotherapy services.

Upon advising the complainant of the Ministry's suggested compromise, we were still of the opinion that his was an exceptional and unique case and that it would be unreasonable to require him to relocate both his home and his office in order to obtain "approved facility" status.

We subsequently responded to the Deputy Minister's proposal indicating that we were still of the view that our original recommendation was in order and we again recommended that the Ministry grant the complainant approval for OHIP coverage for his physiotherapy practice.

The Deputy Minister subsequently replied and stated that the necessary steps would be taken to have the complainant's physiotherapy practice listed as an "approved facility", this being a satisfactory resolution to the complainant's request that his application be judged on its own particular merits.

Upon the conclusion of this matter, we forwarded our final report and the Ministry's final response to the complainant, who subsequently expressed his appreciation and stated that Ministry officials had recently visited his office and that his practice would be listed as an "approved facility" on January 1, 1978.

(40)

SUMMARY OF COMPLAINT

The complainant, who is a medical doctor, administrator and part-owner of a nursing home in an Eastern Ontario city, wrote to us with a complaint about the method and criteria by which the Ministry of Health had awarded a 60-bed nursing home for a nearby County.

Prior to contacting our Office, the complainant had attempted to pursue his complaint with his M.P.P., who had raised the matter in the Legislature, and with the Ontario Medical Association.

We notified the Ministry of Health of our intention to investigate this complaint. Over 30 people were officially interviewed by our staff in the ensuing exhaustive investigation. Moreover, several people were asked to give evidence under oath, pursuant to Section 20(2) of The Ombudsman Act. Those persons included the successful recipient of the new 60-bed nursing home and three of his former nurses/nursing assistants, the local Fire Chief, the complainant, several senior Ministry of Health personnel, the M.P.P. for the County receiving the 60-bed nursing home and the Deputy Minister of Health.

The Ombudsman stated in his 69-page final report on the matter that on the basis of his investigation, including the representations received from the parties, pursuant to Section 19(3) of The Ombudsman Act, it was his conclusion that the award of the 60-bed nursing home by the Ministry to the former nursing home operator was based to a large extent on "irrelevant grounds" and "irrelevant considerations" within the meaning of Section 22(2) of The Ombudsman Act.

The Ombudsman noted that the Extended Care Program Committee of the Ministry, which was charged with the responsibility of considering all the proposals received, selected the proposal of the complainant as its second choice. The Committee further reported that the successful applicant's proposal had not been expressly considered because it did not contain sufficient financial information to enable the Committee to properly compare it with the other proposals submitted. Some nine other proposals were likewise rejected for lack of financial information.

Notwithstanding this, the successful applicant was notified in December, 1975, by the Ministry, that he had been granted approval to construct a 60-bed nursing home. This award was made conditional on the successful applicant's surrendering his prior approval for a 40-bed nursing home in an adjoining County.

The explanation given by the personnel of the Ministry who were asked to justify the award included:

1. The decision was based on sound economic considerations. In this regard, the Ministry was operating under strict financial constraints and by making the award to the successful recipient, who thereby agreed to forfeit his prior approval for a 40-bed home, the Ministry would incur the expense only of an increment of 20 nursing home beds.

2. The former Parliamentary Assistant to the Minister of Health and the local M.P.P. felt an "obligation" to the successful recipient, who had charged that the Ministry had treated him unfairly during the operation of his former nursing home. The successful recipient alleged that after the Ministry had required him to reduce his bed capacity from 34 to 20 beds, it was no longer financially feasible for him to operate his nursing home. The successful recipient was also of the view that the Ministry had not been justified in demanding that he reduce his bed quota from 34 to 20 beds.
3. The Ministry was satisfied that the recently-amended nursing home legislation gave the Government adequate regulatory powers over the operation of nursing homes, so that any delinquency exhibited by the successful recipient would not be tolerated in his administration of the new 60-bed home.

The Ombudsman came to the conclusion that, while economic considerations were certainly relevant in deciding to whom to award the 60-bed nursing home, of first importance was the need to ensure that the successful candidate for the award would be certain to guarantee that the residents of the home would receive quality health care pursuant to each and every detail of The Nursing Homes Act and its regulations.

The Ombudsman was not satisfied that this primary consideration received from the Ministry the weight which it unquestionably merited. The Ombudsman stated that "it far transcends any and all supposed moral obligation or economic consideration."

The Ombudsman also concluded that the Ministry should have given greater consideration to the other applicants. In the case of the complainant, the Ombudsman stated that it was clear from the evidence that the complainant enjoyed the highest possible reputation insofar as the operation of a nursing home is concerned and, in fact, his application received the support of the "We Care Committee" made up of senior citizens in the County.

The Ombudsman stated also that "it is impossible to escape the conclusion that the successful recipient had an extremely poor record as owner and operator of a nursing home." He further stated that "I have taken into account his insistence that his record was not as bad as the Ministry of Health records indicate."

The Ombudsman also concluded

"with reference to the award of the 40-bed nursing home to the successful recipient

in 1974 (2 years after the proclamation of The Nursing Homes Act, 1972) this cannot be supported in my opinion, as I have already indicated, on grounds of moral obligation, in view of the successful recipient's prior record as owner and operator of his nursing home. It follows, therefore, that the subsequent award of the 60-bed nursing home to the successful recipient cannot be supported either, merely on the basis that he had agreed to forfeit his renewed 40-bed licence."

There had been considerable controversy generated in the local media with regard to the award of the 60-bed nursing home licence to the successful recipient, and allegations of political patronage had been made both by the complainant, his M.P.P. and others.

The successful recipient indicated during his interview with the Ombudsman that years ago he had run and lost as a federal candidate of the Conservative Party. The successful recipient also indicated that he was a member of the local Board of Health, an appointment made by the Provincial Government. He admitted that he had been an active supporter of the Conservative Party in Ontario and in 1975 was the Vice President of the Progressive Conservative Association of three combined Eastern Ontario Counties.

When confronted by the Ombudsman with the allegations of political patronage, the successful recipient stated that he had never used his position as a member of the local Board of Health to influence the Ministry in relation to his status as an owner and operator of a nursing home. Furthermore, he informed the Ombudsman that he did not use his position in the Conservative Party to influence the Ministry in its decision to award the 60-bed home to him.

The Ombudsman stated in his final report:

"I wish now to deal with the allegation that the award of the nursing home to the successful recipient was made on the basis of outright political patronage. This is a serious allegation, and I have considered it very carefully. Many of the circumstances enumerated in the earlier part of this report might tend to support such a conclusion, were they to have gone unanswered.

However, I have carefully considered the denials of this allegation by such distinguished citizens of this Province as the (former) Minister of Health, past and present Parliamentary Assistants to the Minister of Health, and the local M.P.P. I accept their denials which were clear and unequivocal and in most cases given under oath."

The Ombudsman was of the view that the principal defect in the award that was made to the successful recipient was that undue consideration was given to the sense of moral obligation to the successful recipient and to policies of economic restraint, neither of which should have been allowed to take precedence over what should have been the paramount concern for the well-being of the future occupants of the nursing home. The Ombudsman stated that it was clear that the complainant's proposal and the proposals of all the other applicants for the 60-bed nursing home licence were given proper and fair consideration by the Extended Care Program Committee which had been set up by the Ministry to consider these applications. The Ombudsman stated in his final report that:

"This case has caused me the greatest possible anxiety. As earlier indicated, I thought very seriously that I should recommend the award of the 60-bed nursing home to [the successful recipient] by the Ministry of Health be cancelled and that new proposals be invited.

After the most anxious and serious consideration, I have come to the conclusion that were I to make this recommendation, I would be perpetrating a very serious injustice to the successful recipient. I would not have hesitated to make such a recommendation had I thought that the best interests of the future occupants of the nursing home could only be served by such a recommendation. This I find not to be the case.

In light of the expenses, commitments and contractual obligations which have so far been incurred and undertaken by the successful recipient by reasons of the Ministry's award to him, it would be improper for me to now recommend that the award be cancelled . . . I feel reasonably confident, in the light of my observations of [the successful recipient] on the occasions that I have met with him, that he is possessed of sufficient sense and responsibility to discharge his duties as a nursing home operator in the premises presently planned by him in a way that will not give rise to complaints by the future occupants of his nursing home. I have examined the plans proposed for his new establishment and they appear to be of high quality.

It is my recommendation, however, that in view of his past record, the Ministry should closely monitor the operation to ensure that the terms and regulations of the present Nursing Homes Act, and the licence, if granted, are adhered to."

The newly-appointed Minister responded to the Ombudsman's recommendations as follows:

"I have received your opinion and recommendations on the complaint made to your office by the complainant and would like to make the following comments with respect to your recommendations.

1. Recommendation: all applicants should be informed well in advance of the due date for applications, of the criteria upon which the Ministry intends to rely in making the award for a nursing home, including the weight to be attached to each factor.

We have developed a procedure and evaluation criteria for assessing nursing home proposals, and I will see that all applicants are informed well in advance of the due date for applications as well as the criteria and procedures used to assess the applications.

2. Recommendation: every unsuccessful candidate should be provided with written reasons as to why his proposal was rejected, based on these criteria.

You may be assured that we will provide a written explanation to unsuccessful candidates as to why their proposals were rejected. I am sure you can appreciate that subjective criteria, such as the concern for human needs, originality and creativity and the capacity to relate to the community, might be fairly difficult and, indeed, at times, perhaps, too provocative to communicate objectively. However, I am confident that ways can be found to touch on even these points in a way that will be perceived as being helpful to the applicant.

3. Recommendation: The Nursing Homes Act, 1972 be amended in order that provision be made for the successful candidate for the construction of a new home to make application for a conditional licence immediately upon the making of the award to him. The licence should be conditional upon compliance with the terms of the proposal and any subsequent stipulations imposed by the Ministry prior to the granting of an unconditional licence. It, of course, goes without saying that the licence would also be conditional upon the terms of the Act, regulations and licence being complied with. All those sections of The Nursing Homes Act that presently apply to an applicant for a licence, should also be made applicable to an applicant for a conditional licence. It is an anomaly of the present Act that neither the Ministry nor the Director appointed under the Act, would in the case of an applicant for a licence for a new home, be required to put their

minds to the items set forth in Section 4 and 5, in deciding whether a licence should be issued, until after construction was complete.

I agree with your recommendation that the successful applicant have a right to an immediate conditional licence, subject of course to compliance with the terms of the proposal and to those provisions of the legislation which relate generally to licences.

I am prepared to propose a provision to that effect in an amendment to the Act. I should add that my Ministry is reviewing certain other provisions of the Act relating to licensing with a view to possible amendment, and I anticipate that the entire package will go forward at the same time."

The Minister of Health concluded his comments by stating:

"I appreciated receiving your comprehensive and thorough Report on the complaint of the complainant and feel that, generally, your comments have been most reasonable."

Following our receipt of the Minister's reply, copies of our report and the Minister's response were sent to the complainant and his M.P.P.

(41) SUMMARY OF COMPLAINT

This complainant was a 69-year old woman who was a patient in a psychiatric hospital.

The complainant wrote to us and was subsequently interviewed by one of our Investigators. She said that she had a drinking problem and that she had been living alone in a rooming house on her old age pension. She explained that she had entered the hospital voluntarily and that she had consumed a bottle of liquor in order to convince the hospital that she needed to be institutionalized.

She outlined three complaints. First, she wanted to know if a dental appointment had been arranged for her. She claimed that she had brought this matter up with hospital staff on two occasions. Second, she wanted to know what was happening with respect to the surgical removal of a lump on her arm. Although this lump was not malignant, she claimed that it had been a month since she had seen the surgeon. Third, she wanted to see a counsellor about employment.

Following the interview, the complainant's concerns were discussed with her social worker. It was evident that the social worker was very familiar with the complainant's situation, having worked with her during the previous four or five years. He had a great deal of contact with her both in and out of hospital and was willing to assist in every way possible. The social worker explained that the complainant had a history of numerous hospitalizations and that she usually did well for about two years following hospitalization. Although he had hoped to prevent her most recent hospitalization, he was unsuccessful in doing so because she had started drinking and had become suicidal. He went on to explain that she was quite a management problem on the hospital unit because she was very demanding yet she would not talk to the staff on the ward nor co-operate with them. The social worker was most helpful, indicating that he was willing to discuss the complainant's concern about employment with her and that he would look into her concerns about a dental appointment and about surgery. We were subsequently advised that the complainant saw a dentist the day after her interview with our Investigator. In addition, we were advised that the surgery would be performed at a general hospital and that it could possibly be done in the near future.

Two days after the complainant was interviewed by our Investigator, she telephoned us. Apparently, she had just been told that she was to be discharged from hospital the next day. She complained that she could not possibly find suitable accommodation on such short notice. She was referred to her social worker, but she then said that she would rather kill herself than live in unsuitable accommodation.

Subsequently, we contacted the hospital and were informed that the complainant had been allowed out on a pass in order to attend to some specific personal matters. We were further advised that she had been returned to the hospital in an inebriated condition by the police, that her behaviour on the ward upon her return was very disruptive and that the staff had a great deal of difficulty controlling the situation. As a result, the staff felt that she should be discharged from the hospital and continue as an out-patient.

Our contact with the hospital about two weeks later established that the complainant was still in hospital and that her surgery had been scheduled.

Having regard to all the circumstances of this case, we determined that no further investigation on the part of the Ombudsman was necessary.

(42)

SUMMARY OF COMPLAINT

This complainant wrote to us stating that he was being kept in the security unit of a psychiatric hospital in Central Ontario beyond the period of his remand for observation by the court. The complainant asked that the Ombudsman investigate

his situation with a view to having him returned to the court.

Our investigation included interviewing the complainant and, with his permission, reviewing his hospital file. His circumstances were discussed with the forensic psychiatrist. We found that following an initial assessment during a 30-day Warrant of Remand for Observation, the complainant was considered unfit to stand trial. A physician's application for involuntary admission (Form 1, The Mental Health Act) was completed by a staff psychiatrist. The complainant's involuntary hospitalization was later extended by a certificate of renewal (Form 4, The Mental Health Act) by a staff physician. The complainant applied to the Board of Review for consideration of his case pursuant to The Mental Health Act, Section 28. The Board ruled that the complainant suffered from a mental disorder of a nature or degree so as to require his hospitalization in the interests of his own safety or the safety of others. In addition, the complainant had been declared incompetent to manage his financial affairs pursuant to The Mental Health Act, Section 32.

Our Investigator was advised that the complainant would likely be fit to stand trial within a short period of time. Having regard to all the circumstances, we concluded that the decision to keep the complainant in the security unit of the psychiatric hospital was reasonable and had been carried out pursuant to The Mental Health Act. We felt that a proper inquiry had been made into all the facts and that the complainant had been properly examined by qualified medical practitioners.

A full report was made to the complainant, detailing the scope of our investigation and the facts upon which our conclusion was based. Our Office was advised, six days after this report was mailed, that the complainant had been released from the security unit of the psychiatric hospital to the care of a local jail. He was then released from custody on bail and returned to his parent's home in Northern Ontario where psychiatric follow-up had been arranged as well as supervision of him by the local police.

At the time the complainant was interviewed by our Investigator, he alleged that he had been assaulted by two attendants who had punched, kneed and choked him until he was unconscious.

During our Investigator's visit to the hospital, another patient requested an interview and alleged that he had witnessed an unprovoked attack on the complainant by two attendants. The complainant and this patient were interviewed at length over two days and statements were taken. Three other patients who were said to have witnessed the incident described were also interviewed. One denied that such an incident had occurred, one stated that he had not witnessed such an event, and one did not wish to get involved in the matter.

There had already been an investigation conducted by the local detachment of the Ontario Provincial Police (OPP). A copy of the OPP report to the hospital authorities was obtained. In addition, the hospital staff conducted its own investigation when the patient who approached our Investigator as a witness made the same report to them after he was not included in interviews conducted by the OPP.

Our Investigator was given information about the hospital's investigation of this matter by the Acting Unit Director, the Assistant Director of Nursing, the Medical Director and the Hospital Administrator. No incident report had been filed. Neither the OPP investigation nor the hospital's internal investigation elicited evidence that the complainant had been attacked by attendant staff.

Our Investigator, while at this facility, consulted with the Director of Correctional and Psychiatric Services in our Office by telephone. The Deputy Minister of Health was notified by telephone of our intention to investigate this complaint in accordance with a procedure which was established at a previous meeting with the Director of the Psychiatric Hospitals Branch, Ministry of Health, in the event that our Office received a complaint alleging physical abuse. The alleged assailants were contacted and advised that a formal investigation had been commenced by our Office. They were requested to provide statements concerning the allegations. In response to a letter from our Office, the Commissioner of the OPP made available copies of all reports on interviews conducted by the Provincial constable who was responsible for the OPP investigation. In addition, our Investigator contacted the lawyer who acted as Duty Counsel and originally communicated the complainant's allegations to the OPP. Since the complainant had been visited by his mother and his brother-in-law about the time of the alleged attack, they were interviewed by telephone.

Following a review of the available information by our legal and senior staff, it was considered necessary for our Office to conduct a hearing pursuant to Section 20(2) of the Ombudsman Act. Notices were sent to persons concerned two weeks in advance of the hearing. In accordance with a working agreement with the Ontario Public Service Employees Union (OPSEU), the Assistant Chief Representative was notified that a hearing would be held and that attendant staff would be asked to give evidence under oath.

The hearing took place five weeks after we had received the complaint. Since several witnesses were being held in strict custody, it was necessary to hold the hearing within the security unit of the psychiatric hospital. Arrangements were made by our Office for the complainant to attend from Northern Ontario. The Hospital Administrator, the President of the local union and the Staff Representative of OPSEU attended throughout the hearing, which continued for a day and a half. Evidence under oath was heard from nine individuals. The alleged assailants were present throughout the entire

proceeding and were represented by legal counsel, as was the witness who originally corroborated the alleged assault. The attendants' time records were introduced as was the ward record book. Reference was made to the hospital files of the complainant and the corroborating witness.

The witness who was initially reluctant to be involved later refused to participate at the hearing but subsequently was sworn and stated that he witnessed the alleged attack. His identification of the alleged assailants matched that of the complainant and the witness who originally came forward. The evidence given by the complainant and the two witnesses did not establish a specific date or time of day for the alleged offence, but clearly demonstrated that the complainant had to be restrained by other patients and staff on several occasions.

The alleged assailants were together on duty on the ward in question only two days in the month when it was alleged that the attack occurred. Neither the complainant nor the corroborating witnesses gave these dates as the time-frame in which the alleged assault took place. The evidence concerning the incident varied in the information given by the complainant, the voluntary witness and the second supporting witness at the Ombudsman's hearing. There was a difference in the description of the event precipitating the alleged attack and in the manner and number of blows struck by the alleged assailants. It was noted that during the investigation carried out by the hospital staff, the complainant's credibility was said to be questionable. The attendants themselves categorically denied assaulting the complainant.

On the basis of the foregoing, we concluded that the allegations made by the complainant could not be supported by the totality of the evidence. Ten days after the hearing, a full report was sent to the complainant pursuant to Section 23(2) of The Ombudsman Act. A similar report was sent to the Deputy Minister of Health. In view of the sensitive nature of the investigation, copies of the report to the Deputy Minister were sent to the Medical Director of the hospital and to the legal counsel for the alleged assailants.

(43) SUMMARY OF COMPLAINT

The complainant in this case was the mother of a mentally-retarded adult male who was serving a sentence in a correctional institution in Eastern Ontario. Her son had not been able to manage in the general inmate population and she was of the opinion that he required help for his psychiatric problems. She asked us to investigate the possibility of obtaining a transfer for him to a psychiatric hospital.

During a visit to the correctional institution, we found that the complainant's son had already been transferred to a security unit in a psychiatric hospital in Central Ontario.

He had been certified under The Mental Health Act. The complainant's son was interviewed at the hospital and he described unpleasant experiences he had suffered at the hands of other inmates in the correctional system. An interview with the hospital's Unit Director revealed that the complainant's son was not thought to be mentally ill. He was said to be epileptic and described as verbally aggressive with an immature, inadequate, anti-social personality - a clinical picture stemming from retardation. However, it was felt that he had become psychotic and should be stabilized and then returned to the correctional institution to complete his sentence.

Another son of the complainant contacted our Office because of the family's fear that the brother would be returned to the correctional system and ultimately discharged without appropriate plans having been made for his placement and supervision in the community. The family could no longer cope with him at home. In the Centres for the Developmentally Handicapped, which are operated by the Ministry of Community and Social Services under The Developmental Services Act, there is no provision for the degree of physical security which was felt to be necessary in this case. A friend of the complainant, who was also an employee of the Ministry of Community and Social Services and understanding of the son's needs, telephoned to volunteer her assistance in any way possible. As a result of our discussions with this individual and with the Director of the psychiatric hospital unit, it was eventually resolved that the complainant's son would remain in the security unit of the psychiatric hospital. In the meantime, a protective services worker with the Ministry of Community and Social Services was involved as a contact for the staff at the hospital as well as for the family in the event that the condition of the complainant's son might allow his transfer to a suitable community residence in the future.

From further follow-up, our Investigator found that the complainant's son could not be considered for release from the psychiatric hospital at the expiry of his sentence because of behaviour problems and his involuntary hospitalization was continued under certification pursuant to The Mental Health Act.

(44) SUMMARY OF COMPLAINT

The complainant, a French-speaking patient in the security unit of a psychiatric hospital in Central Ontario, asked us to investigate the fact that he was required to pay a premium for family coverage under the Ontario Health Insurance Plan (OHIP). When the complainant was interviewed, he advised our Investigator that since his letter to us, his social worker had discovered that there had been a change in policy and that the complainant's last cheque to OHIP for \$128 would be refunded.

Our Investigator was advised that in the past, patients had been expected to take financial responsibility for themselves and their dependents, if they had funds. The Hospital Administrator stated that this practice had been changed. In view of the large number of long-term patients in the security unit, it was more efficient for them to be included under a special OHIP block number assigned to the hospital.

In a later interview with the complainant, our Investigator was advised that the last cheque he had sent to OHIP had been returned, but he felt that he might still be entitled to a further refund. Our Investigator contacted the guardian of the complainant's children in Northern Ontario and obtained information about their coverage under OHIP which had been arranged by the Children's Aid Society. The appropriate information was forwarded by letter to an OHIP officer who conducted an investigation and found that a further refund to the complainant of \$162 was in order. A full report of our investigation and the outcome was then sent, in French, to the complainant.

(45) SUMMARY OF COMPLAINT

This complainant was experiencing problems with the Ontario Health Insurance Plan (OHIP) respecting his payment of premiums. There was some question in the complainant's mind as to whether he was receiving coverage from OHIP as there had been a great deal of confusion concerning his premium payments covering a period of a year and a half.

The Ministry of Health was advised of the complainant's contention and this matter was reviewed by OHIP which replied to the complainant explaining to him an apparent misunderstanding.

Following receipt of this letter from OHIP, the complainant corresponded further with our Office and indicated that, generally, the situation as outlined in the OHIP letter appeared to be satisfactory. There were, however, two points which still remained unclear. The complainant wished to be assured that following his last remittance to OHIP in the amount of \$96 in March, 1977, his coverage would be effective immediately and continue until July 5, 1977. Secondly, there was still some question as to whether he would receive payment for medical bills incurred in April and May, 1976.

On April 2, 1977, the complainant wrote to us enclosing copies of two letters from OHIP, one dated March 25, 1977, and the other dated March 30, 1977. The letters advised that the complainant's remittance of \$96 had been applied to the benefit period January 1, 1977 to July 5, 1977. They also stated that the complainant would be reimbursed for medical payments made in April and May, 1976 at the usual 90% rate.

As a result of this information, the complainant indicated to us that his complaint had been resolved to his satisfaction and he expressed his appreciation for our assistance.

(46) SUMMARY OF COMPLAINT

In 1973, this complainant approached the Ministry of Health for permission to open a private physiotherapy clinic. She was advised to make a formal application which she did. She alleged that the decision on her application was delayed to allow a Ministry project team to report on the need for the clinic. She alleged, however, that the local hospital was allowed to establish a satellite out-patient physiotherapy department. In March, 1976, she wrote asking about the status of her application with the Ministry but was told that it had been refused because levels of physiotherapy service in the area were within the guidelines for an adequate level of service.

The complainant contended that her application was on file well before the hospital was granted permission to open its facility, she disputed the statement that service in the area was adequate, and she maintained that the restrictive policy of the Ministry in the establishment of private physiotherapy clinics was unjust.

Our investigation showed that the establishment of a private physiotherapy clinic was refused on February 17, 1971, as it was the policy to recommend development of existing and projected hospital facilities to full potential before accepting any further expansion of the Private Physiotherapy Plan.

Investigation also revealed that on November 28, 1972, suggestions were made by Ministry staff to the local hospital regarding a satellite physiotherapy department because of inadequate space in the hospital. A formal request was received from the hospital on December 27, 1972, for the establishment of such a satellite. Around the same time, a private individual (not the complainant) asked to open a facility under the Private Physiotherapy Plan. After study by the Ministry, a satellite clinic operated by the hospital was approved and opened on May 1, 1973.

Our investigation showed that counsel to the Ontario Branch, Canadian Physiotherapy Association, had forwarded to the Ministry on May 8, 1973, a request by the complainant to establish a private clinic. She submitted a formal application on October 12, 1973, and was told on November 8, 1973, that a project team was needed to quantify the criteria for approval and that a decision would be delayed. A letter to her on May 13, 1974, indicated that the report and other matters were being discussed by the Ministry and the Association and that her application would be considered in light of any new policies formed when discussions had ended.

These discussions continue to date. On March 16, 1976, the complainant was told that the levels of out-patient physiotherapy services in the area were within the guidelines of an adequate level of service and she was also told that her application had not been approved.

Our Investigator obtained evidence on the Guidelines for the Availability of Out-Patient Physiotherapy Services which were used to assess the adequacy of service. The basis was a research study which appeared in Physiotherapy Canada, Volume 27, No. 3, 1975. Confirmation was obtained of the statistical basis for the decision of the Ministry to refuse the complainant's application. Staffing levels of the hospital were examined and they showed that, in spite of a decrease in staff from 1975 to 1976, physiotherapy services provided actually increased. Our Investigator also obtained evidence showing that no representations had been received from area physicians or patients seeking more services subsequent to the opening of the hospital satellite clinic in May, 1973.

Having given full consideration to the facts revealed by the investigation, we found no basis on which the actions of the Ministry of Health could be faulted. The complainant and the Ministry were sent a report containing the results of our investigation.

(47) SUMMARY OF COMPLAINT

This complainant visited our Office and presented a problem concerning a device for the treatment of bed-wetting (enuresis). He was the manufacturer of the device and he claimed a very high success rate for it compared with conventional treatment methods. The complainant wanted the Ministry of Health to produce brochures on enuresis treatment and he also wanted the cost of treatment by the device to be covered under the Ontario Health Insurance Plan (OHIP) since many people cannot afford the treatment without the financial assistance of OHIP.

The Ministry stated that it could not promote one type of treatment over other equally valid approaches, stressing the role of the clinical practitioner and his awareness of the patient. Medical opinion both within and outside the Ministry indicated that the management of enuresis is a common clinical problem which physicians and nurses must address regularly. It requires an individual flexible approach consistent with the patient's needs and involves several approaches and requires direct, continuing management by the attending physician. The Ministry had no plans to publish a brochure on enuresis and, in any event, such brochures usually avoid specific remedies but direct individuals to family doctors. Overall, the Ministry did not consider enuresis a priority health concern.

Since the device was a prescription item evidence was sought as to whether physicians were aware of it. Evidence was obtained from the complainant that he had advertised the

device in professional journals. Further evidence indicated that information on enuresis is generally available to practitioners who diagnose and treat the condition.

Evidence from the Ministry indicated that it saw no reason to justify a change in its policy concerning non-payment for the device through OHIP. Numerous examples of other treatment aids and adjuncts were cited, including drugs, spectacles, orthotics, prosthetics, dentures, appliances and wheelchairs, none of which is paid for through OHIP. Support for the enuresis device would be inconsistent with this policy.

The weight of the medical opinion was such that we concluded that the refusal of the Ministry to publish a brochure and to permit payment for the device under OHIP was not an unfair decision. Having regard to these circumstances, we found ourselves unable to support the complainant.

MINISTRY OF

HOUSING

(48) SUMMARY OF COMPLAINT

The complainant, who is French speaking, contended that his application to transfer part of his farm property to one of his daughters was unfairly denied by the Lands Administration Branch of the Ministry of Housing under the terms of section 33(4) of The Planning Act. The complainant's M.P.P. had made several attempts to assist the complainant in this matter but these proved to be unsuccessful.

Upon review of the Ministry's file, our Investigator ascertained that the Ministry took the position that this proposal was contrary to the policy of encouraging residential development to locate in urban areas rather than throughout the rural sectors of the province. Also, the Ministry of Transportation and Communications, in order to ensure proper use of the secondary highway abutting the property, could not recommend approval of a lot with less than 600' frontage. The Ministry also stated that it objected to strip development along the highway system and that it recommended that any further severances be by a Plan of Subdivision, which subdivision would be properly serviced by an internal street system. However, a review of the file further revealed that members of the local Planning Board discussed the application at one of the Board's meetings and discovered that the Official Plan requires an area of 80,000 sq. ft., whereas the complainant's application involved an area of only 36,000 sq. ft. Also, the Official Plan of the area allowed for one severance only per Township lot whereas the complainant had already obtained such a severance for his son in 1974.

During the course of our investigation, we learned that the Ministry of Transportation and Communications recently revised land severance controls on a number of highways in the area, one of which was the secondary highway in question. In discussions with officials from the Ministry of Transportation and Communications, our Investigator learned that it was hoped that in the near future approval of the policy change concerning the local secondary highway would be obtained, at which time the Ministry of Transportation and Communications would dispatch a letter to the Ministry of Housing advising that there was no longer any objection to the severance of the complainant's property.

Our investigation also revealed that the local Planning Board which the Ministry of Housing contacted in regard to the complainant's severance in fact had no jurisdiction over the complainant's property, as it was situated in an adjacent unorganized Township.

Our Investigator then relayed the above information to the Ministry of Housing, and a reply was received in which the Ministry indicated that in light of the new information, it would be advisable for the complainant to submit a new application for severance as his chances would be much better than they had been in the past.

Our Director of Rural and Municipal Services contacted the complainant by telephone and related the results of our investigation to him. The complainant indicated his satisfaction with the results of our investigation and agreed to submit a new application for severance to the Ministry of Housing.

We have since learned that the complainant's application has been considered by the Ministry, which decided to recommend that consent be granted, provided the necessary conditions were fulfilled.

(49) SUMMARY OF COMPLAINT

The complainant, who owned land near Whitby, complained to us regarding the price paid for her property by the Ontario Housing Corporation (OHC) in 1974, relating to the corporation's purchase of a large tract of land known as the North Whitby Land Assembly Project. This land acquisition and housing development program for Central Ontario involved 2,373 acres.

It was the complainant's contention that the price paid to her was below that paid to abutting property owners who had also sold their land to OHC.

It was determined during our investigation that a local real estate company, on behalf of OHC, had entered into an agreement to purchase 37.14 acres of the complainant's property at a price of \$129,900. The transaction was completed in March, 1974. The complainant was also allowed to retain 2.34 acres of her original 40 acres, upon which were located her house and a large pond. It was also determined that the Ministry of Government Services currently leases back to the complainant the 37.14 acres for about \$600 annually, which approximates the yearly property tax payable on the land.

During our investigation, we spoke with officials of OHC, the owner of the real estate company that purchased the complainant's property on behalf of OHC and also to two M.P.P.'s who had been involved in the matter.

Ontario Housing Corporation's initial response to the complainant's contention was that the local real estate firm was operating under the terms of an agreement with OHC which required the realtor to represent himself as an agent for an undisclosed purchaser. OHC advised us that the realtor was also required to conduct negotiations in the same manner

as would be followed by a private sector developer, observing the highest ethical standards, without exerting pressure or influence on the owner.

OHC explained that its experience had shown that knowledge of government acquiring property by purchase in the open market exerts an upward pressure on the owner's expectations beyond those that would normally be adopted. It was the corporation's position that it would not accept anyone's assumption that the government should pay more for the land on the open market than would any other purchaser. OHC's overall position was that there were no reasonable grounds on which the complainant could contend that she had not been dealt with fairly.

A signed statement by the real estate agent who had negotiated the transaction on behalf of OHC indicated that he did not pressure the complainant to sell her property.

Upon completion of our initial investigation, we again approached OHC and asked officials to provide us with a more detailed response to several issues which had been raised during our investigation.

OHC subsequently provided us with the details and amounts of all transactions relating to the North Whitby Land Assembly Project, and, in particular, with details relating to those lands considered to be adjacent to and comparable in size to the complainant's property. OHC advised us that the basic principle in purchasing lands was that the price paid was to be negotiated, provided it met the price ceilings established.

Our investigation revealed that, prior to obtaining approval to proceed, OHC staff made a discreet survey of the area to determine recent sales and asking prices. Local realtors were also asked about prevailing prices in the area, this too being undertaken discreetly in order to maintain strict confidentiality. According to OHC, the realtor and his salesmen were never made aware of the total amount of land to be purchased, nor did they know the ultimate price OHC was prepared to pay for a given parcel of land.

Having been provided with the rationale and figures relating to the North Whitby Land Assembly Project, we advised the complainant that we were satisfied with OHC's explanation as to why some of her neighbours had received more money for their property than she had.

Our investigation also revealed that the complainant's property had been listed with a local real estate company from December 5, 1972 to May 30, 1973 (a year before the OHC purchase). The asking price at that time was \$125,000 for the 40 acres of land including all the buildings. OHC pointed out to us that under the terms of the sale to the complainant, she retained 2.34 acres and all buildings. The complainant was paid \$129,000 for 37.14 acres in 1974 and she also retained about 300 feet, or about half the road frontage. It was OHC's contention that the complainant did far better than she had expected to do when her property was listed two years earlier.

Based on our investigation, we advised the complainant that we could not come to the conclusion that the OHC or the real estate agent had treated her in an unjust, unreasonable, oppressive or improperly discriminatory manner in accordance with Section 22(1)(b) of The Ombudsman Act.

In the report of our investigation to the Deputy Minister of Housing, the Ombudsman stated, in part, "...I have judged this complaint on its own particular merits based on the facts, and in no way shall my opinion on this matter be a reflection of my concerns over the South Cayuga Land Assembly case which I am still investigating."

(50) SUMMARY OF COMPLAINT

In 1973, the complainant purchased 28 acres of land near the Niagara Escarpment and built a house. A year later, he decided to sell the house and 2.5 acres of land and then build another home for his use upon the remaining 25.5 acres. He accordingly made application to sever his property.

First, the local Land Division Committee denied the complainant his severance, but the Ontario Municipal Board subsequently overturned the decision and the severance was granted on June 26, 1975.

However, two weeks earlier, on June 10, 1975, it became necessary for all persons living within what is called the "Niagara Escarpment Development Control Area" to submit applications for development permits to the Niagara Escarpment Commission for its approval.

The Commission's objective is to maintain the escarpment and land in its vicinity substantially as a continuous natural environment and to ensure that only such development occurs as is compatible with the natural environment. The Commission is charged by the Government of Ontario to prepare a master plan for a 2,000 square mile area that stretches from the Niagara River to the tip of the Bruce Peninsula. Rather than "freeze" development while the master plan is prepared, the government decided to permit development to proceed.

However, within the Niagara Escarpment Planning area, a much smaller area is designated by regulations as a "Development Control Area." The complainant lives in such an area. The environment in a development control area is considered to be especially sensitive and the Commission has been given the requisite legal authority to regulate development in the interim period pending the completion of the master plan.

The complainant, therefore, was obliged to submit an application for a development permit to the Commission, which he did on July 22, 1975.

His application was denied, and the complainant appealed the decision to a Hearing Officer, appointed by the Lieutenant Governor in Council, who investigated the matter thoroughly, and made a recommendation to the Minister of Housing who under

The Niagara Escarpment Planning and Development Act, is vested with a discretionary power to confirm the recommendation of the Hearing Officer, or to vary the recommendation or to make any other decision that in his opinion ought to have been made. The Minister's decision on each application is final. In this case, the Minister agreed with the Hearing Officer's recommendation and denied the complainant a development permit. Thus, on this application for a development permit, the complainant had exhausted all the administrative appeal procedures available to him.

In the meantime, the complainant had heard from his neighbour, who was also trying to obtain a development permit, that he could always re-apply to the Niagara Escarpment Commission. Both gentlemen decided to submit new applications after having discussed their concerns with members of the Commission.

The complainant's application was again turned down by the Commission, while his neighbour's, whose application was quite similar, was approved.

The complainant then appealed for assistance to his M.P.P. and was referred to our Office. We subsequently advised the complainant that since he had submitted a second application, he still had a right of appeal on that application to the Minister of Housing and, therefore, by virtue of section 15(4)(a) of our Act, we could not begin our investigation until he had exhausted this right of appeal. He subsequently appealed his second application for a development permit, and the Minister of Housing for a second time denied his application.

Our Investigator examined all relevant Ministry of Housing and Niagara Escarpment Commission files on the complainant's first two applications, in addition to reviewing other files, such as the complainant's neighbour's file. Our Investigator discussed the complaint with the Chairman of the Niagara Escarpment Commission, the Chief Hearing Officer and several Ministry officials and conducted an on-site inspection of the property.

The Ministry's position regarding this complaint was that its review of the matter had failed to disclose that the Minister's discretionary power had been exercised for an improper purpose or on irrelevant grounds, within the terms of section 22(2) of The Ombudsman Act.

Based on our investigation, we were inclined to agree that this view was legally correct. In the interim, however, the complainant submitted a third application. Our Investigator again met with the Chairman of the Commission to discuss further several issues regarding the complaint.

One of the reasons the Commission gave, in suggesting that the complainant's application differed from that of his neighbour, was that the latter application for a development permit was for an existing lot, whereas, the Commission said, the complainant's severance, although approved by the Ontario Municipal Board, had not been completed, as a properly surveyed reference plan is required before

the Board will issue its order to the local Land Division Committee and before the instrument may be registered.

Our Investigator explained the complainant's position to the Chairman of the Commission and indicated that the complainant was somewhat reluctant to spend approximately \$2,000 on finalizing a severance he already had approval for if he was not to receive a development permit. We were also sympathetic to the complainant's contention that, had it not been for a delay in getting his severance approved by the Ontario Municipal Board, he would have received his building permit from the local authorities prior to June 10, 1975, when development permits began being controlled by the Commission.

The complainant later wrote to us to state that, "as a result of your staff's direct involvement, we received our development permit early last month... Finally, we want to express our gratitude for the assistance your office has given us. Your staff always put me at ease when I contacted them and lent a very sympathetic ear to all my complaining."

(51) SUMMARY OF COMPLAINT

This complainant, who owns property within the Niagara Escarpment Development Control Area, complained to us about the issuance of a development permit to one of her neighbours.

The neighbour applied to the Niagara Escarpment Commission for a development permit after he had received a severance from the local Land Division Committee to divide his property in half. The neighbour wished to build another house in the newly-severed portion of his property and sell the remaining house and property.

The Niagara Escarpment Commission approved the neighbour's application. However, the matter was appealed by neighbours to the Minister of Housing. The Hearing Officer, appointed by the Lieutenant Governor in Council, subsequently submitted his report and recommendation to the Minister of Housing for his consideration. The Hearing Officer had recommended that the development permit should not be issued and the Minister agreed.

Subsequently, the complainant's neighbour submitted a second application which differed slightly from the first. Again, the Commission approved his application, and, again, the complainant and several of her neighbours appealed the decision.

This time, two Hearing Officers heard the evidence and reported to the Minister. They recommended that the development permit be denied to the complainant's neighbour.

The Minister, however, decided to approve the application this time. The complainant contended that it was improper for

the Minister to grant her neighbour his development permit when none of the circumstances had changed substantially with regard to the reasons for the Minister having denied her neighbour his permit pursuant to his first application.

The Minister's decision on the first application essentially gave two reasons for denial: first, non-conformity of the complainant's neighbour's subject lot with the Official Plan, and, secondly, the prematurity of the proposal in view of the status of the Niagara Escarpment Commission's master plan.

During our investigation, all relevant Ministry and Niagara Escarpment Commission files were examined. Our Investigator interviewed the Chief Hearing Officer for the Niagara Escarpment Development Control Area, staff of the Niagara Escarpment Commission, Ministry officials, neighbours of the complainant and others.

The Ministry's position was that the complainant did not own property situated within 400 feet of her neighbour's property, and, therefore, under section 24(5) of The Niagara Escarpment Planning and Development Act, she had no legal standing to object.

During our investigation, it was determined that the complainant's property was situated approximately 800 feet from that of her neighbour's.

Section 24(5) of The Niagara Escarpment Planning and Development Act provides that the Commission shall send a copy of its decision on development permit applications to all assessed owners of land lying within 400 feet of the land that is the subject of the application. This allows the recipient of such a notice to appeal in writing within 14 days to the Minister of Housing.

Through an apparant oversight, the complainant was sent a copy of the decision on the first application. She was not sent a notice on the second application. Regardless, the Hearing Officers, in accordance with their policy, heard evidence from "all those who wished to be heard" at both hearings, which the complainant and several of her neighbours attended.

Our investigation revealed that after the Minister had approved the complainant's neighbour's second application for a permit, the complainant had written to him to seek clarification as to how he could approve the permit in view of his previous decision in the matter.

The Minister replied by stating, "I had re-evaluated the second proposal as if it were an original matter, that is, without prejudice from the first hearing. As a result of this review, and on the basis of the Niagara Escarpment Commission's position on the proposal, I have decided that a development permit should be issued."

We advised the complainant that, based on our investigation, we were unable to come to the conclusion that the

Minister's discretionary power, vested in him by The Niagara Escarpment Planning and Development Act, had been exercised for an improper purpose, on irrelevant grounds, or on irrelevant considerations, as set forth in section 22(2) of The Ombudsman Act.

We concluded by stating to the complainant that each application considered by the Minister must be treated on its own merits and the Minister was not bound by law to follow his first decision. We stated that the Minister has the right to be inconsistent, so long as he does not exercise his discretion improperly.

Notwithstanding the fact that we were unable to support the complainant's contentions, we wrote to the Minister to remind him that under The Statutory Powers Procedure Act, he could be compelled to give written reasons in a decision such as this and we suggested to him that this course of action be followed in future cases which his decision is contrary to the recommendation of a Hearing Officer.

We were subsequently advised by the Minister that

"in recent months, and in no little part due to inquiries from your office, my staff has been reviewing the documentation procedure related to my decisions under The Niagara Escarpment Planning and Development Act, 1973. As a result of this review, I have concluded that your recommendation is quite acceptable and in keeping with my own inclination to make government a more open process. In the future, therefore, it is my intention to give reasons for my decision where it is contrary to the Hearing Officer's recommendation."

(52)

SUMMARY OF COMPLAINT

This complaint was received during our private hearings at an Eastern Ontario city in March, 1976. The complainant contended that the local housing authority was being grossly mismanaged by its top officials to the detriment of its tenants. In addition to this general allegation, the complainant submitted a "brief" containing the following 14 specific allegations:

- 1) the difficulties in obtaining access to the administrative and operational policies of both the Ontario Housing Corporation and the local housing authority;
- 2) the unfair and unjust application of a residency rule which required all applicants for subsidized housing to have resided in the City for one year to be eligible for public housing;

- 3) the refusal by the Board of Directors of the local housing authority to appoint a tenant to the Board;
- 4) the suppression of a meaningful tenant organization;
- 5) the refusal of the local housing authority to become answerable to the public for its activities;
- 6) the lack of a serious review being made of the suitability of the current General Manager of the local housing authority;
- 7) the lack of co-operation with other special agencies in the local area;
- 8) the favouritism and bias in the selection of tenants;
- 9) the lack of staff training and development for employees of the local housing authority;
- 10) the unfair eviction of tenants;
- 11) the fact that tenants were verbally abused and threatened with eviction as a method of controlling criticisms of the local housing authority's operations;
- 12) the excessive rules and regulations in force to control the personal freedom of tenants;
- 13) the questionable practices concerning the application of retroactive rent increases coupled with a reluctance or a refusal to decrease rents;
- 14) the manipulation of other social agencies by the local housing authority. In some cases, the authority would not accept a tenant unless the appropriate agency or Ministry acted as a trustee for the tenant in the disbursement of rent.

In order to appreciate the complexity of this complaint, it was necessary to examine the background of the local housing authority.

In the late 1960's and early 1970's, the management of the local housing authority was administered by a well-meaning individual who, unfortunately, had little or no management experience. The housing authority was growing rapidly during this period but, according to the Chairman of the Board of Directors, the authority's financial situation was chaotic.

The housing authority at one point found itself with over \$20,000 in rent arrears. There were serious problems with "rent geared-to-income" information, files could not be located on various tenants and, in general, the total administration of the authority was so poor that, had remedial action not been taken, the authority would have been in an impossible financial position.

The current manager of the housing authority was hired on February 1, 1971, and he immediately reorganized and restructured the entire office procedure and re-evaluated the tenants in the housing project. As there had been a serious problem regarding the verification of tenants' incomes, this re-evaluation involved all tenants of the authority. As a result of the study, the authority determined that it was necessary to raise the rents of three-quarters of the tenants.

This task was undertaken by the current manager with little or no management help and with the assistance of only two support staff. His reorganization efforts alienated many tenants who were now forced to be more financially accountable to the authority.

During our investigation, past and present tenants of the authority were interviewed, as well as past and present staff members, representatives of all major local social agencies and the Chairman of the Board of the housing body.

Our investigation also took into account the conditions which existed in the authority prior to and subsequent to the appointment of the current manager.

We discovered that when it became necessary to hire a new manager, the authority placed advertisements locally to attract suitable candidates but these efforts were unsuccessful. Subsequently, the current general manager, who had been on the Board of Directors of the authority for six years and who had a working knowledge of the problems facing the authority, submitted an application which was approved by the Board.

By late 1974, numerous complaints about the authority, its general manager and his dictatorial attitude, and general unfair treatment of tenants became public when a series of articles was published in a local newspaper. The complaints were made both by tenants and representatives of local social agencies.

In January, 1975, four members of the Ontario Housing Corporation conducted a three-day intensive management review of the local housing authority. They criticized the overall management of the authority and made 14 recommendations designed to improve relations between the authority, its tenants and local social agencies.

Substantial changes were subsequently made in the management practices of the authority and a Human Relations Worker was hired to ensure proper liaison between the authority and its tenants. In addition, two Product Managers were hired to be responsible for maintenance and repairs to the project as well as supervision of lease arrangements.

Extensive in-house staff training was also undertaken under the direction of the general manager and his senior staff and they made increased efforts to stay abreast of new developments in the management of subsidized housing programs.

Based on our investigation and interviews, we responded to the complainant's 14-point brief and advised her that:

- 1) Under the direction of the Ministry of Housing personnel, the operational procedures of the local housing authority have been formulated based on a thorough review of public housing across the Province. Tenants of the authority can inquire about specific authority or Ontario Housing Corporation policies and will be given a written response. Tenants will be given access to the authority's policy manual upon request.
- 2) The one-year residency rule was established by the Ontario Housing Corporation and is enforced on a Province-wide basis. It is designed to ensure that established residents in need of subsidized housing are given preference over newly-arrived residents.
- 3) On May 19, 1976, a tenant was appointed to the authority's Board of Directors.
- 4) A tenant's association was formed about three years ago and, despite initial problems between the association and the authority, significant progress has been made in alleviating such problems.
- 5) Although the complainant was unable to provide specific examples to support her claim that the authority refused to be answerable to the public, she alleged that some tenants had been unjustly evicted. Our investigation did not support this claim, but found that the tenants concerned, although some had possibly suffered some hardship, had been dealt with in a fair and reasonable manner by the authority.
- 6) The Ontario Housing Corporation had, in fact, reviewed the management procedures of the local housing authority and had made 14 specific recommendations for change. The author of the OHC report informed us that the OHC had no further criticisms of the housing authority or of the general manager.
- 7) Our investigation revealed that there had been difficulties between the housing authority and other local social agencies but that the relationships had improved substantially. Representatives of the social agencies informed us that their former criticisms no longer applied to the authority.

- 8) Our investigation revealed no basis for the allegation of bias or favouritism on the part of the housing authority. Applications to the authority are considered on the basis of OHC requirements, which must be assessed in a completely impartial manner. In this regard, it is important to note that the housing authority operates under the close scrutiny of the OHC.
- 9) While there had been deficiencies in staff training, the authority is now operated by a management team which improves its professional standards on an on-going basis.
- 10) Our investigation revealed that all evictions undertaken by the authority were lawful and in compliance with The Landlord and Tenant Act. Evictions were made only after receipt of a court order.
- 11) Our interviews with several past and present tenants of the authority did not lead us to support the allegation that tenants were verbally abused and threatened with eviction as a method of controlling criticisms of the authority.
- 12) Our investigation failed to reveal any controls which regulated the personal freedom of tenants. There were rules and regulations relating to payment of rent and lease requirements, however, all of which were made known to tenants upon becoming residents of the authority.
- 13) The housing authority's practices with respect to rent increases and its "rent geared-to-income" formula followed exactly the requirements of the Ontario Housing Corporation and our investigation could not support the allegation that its practices were "questionable."
- 14) Our investigation revealed that only 5 of about 800 tenants of the authority were subject to controls on the disbursement of their income so as to ensure that the authority received its rent. The controls were maintained by appropriate social agencies at the request of the authority and were requested only in cases where (a) an individual had a poor payment record prior to becoming a tenant of the housing authority or (b) an individual had a record of non-payment while in Ontario Housing Corporation accommodation. In such circumstances, the authority felt it prudent to ensure that an appropriate social agency act as trustee for the tenant.

On the basis of our investigation, we concluded that while some allegations of mismanagement of the authority may have been valid in the past, substantial steps had been taken by the authority's management and its Board of Directors to improve its services to and relations with both tenants and other local social agencies. We concluded that the complainant's allegations could not be supported and both the complainant and the Ministry of Housing were advised accordingly.

MINISTRY OF

INDUSTRY AND TOURISM

(53)

SUMMARY OF COMPLAINT

At the Ombudsman's hearings in an Eastern Ontario town, the complainant outlined his complaint dealing with compensation for overtime he worked while employed in the Ministry of Industry and Tourism. He told us that upon reaching age 65 on April 30, 1973, he retired from the service of the Ministry at a northern office. He maintained that he had accumulated overtime which was equivalent to 176 full working days and that, at that time, he was entitled to three weeks leave in lieu of overtime. He believed that the Ministry was responsible for 176 days, notwithstanding the fact that he was in a group which was classified as ineligible for overtime pay.

A Ministry official advised us that the complainant was a full-time, classified employee from April 13, 1959 to April 30, 1974, under Schedule 6, i.e. section 22(1)(d) of the Regulation to The Public Service Act which provides for "...various but not less than 36 hours..." in the work week. The position was classed as management as a Tourist Industry Officer (TIO) # 3 and there was, as a result, no entitlement to compensating time off or compensation in cash for overtime.

A former employee of the Ministry who had been superior to the complainant stated that when the Ministry absorbed the Ministry of Tourism in 1971, he found that the TIOs were under loose control and were accumulating unauthorized overtime at a high rate. As a result, the Civil Service Commission directed that the recording of overtime for Schedule 6 employees would cease and those with overtime credits would be permitted one, two or three weeks vacation.

Directors were informed of the decision in December, 1972, and letters were sent on February 23 and March 27, 1973, to emphasize the cut-off of the old system.

The complainant's attendance registers were obtained for 1972 and 1973, up to March 31, 1973. From December, 1972, until his retirement, no further overtime was recorded but fifteen days time off (i.e. three weeks) in lieu of overtime were taken over five separate weeks. The complainant would not offer a satisfactory explanation for this variance from his account that he had not received the three weeks vacation. After some difficulty, the complainant's former immediate supervisor was located and interviewed. He indicated that both he and the complainant received the three weeks vacation under the directive of December, 1972.

There was no evidence that the complainant was treated any differently from other employees in the group but there was evidence that, until corrective action was taken, the group was receiving perquisites to which it had no entitlement under The Public Service Act.

As a result of our investigation, the Ombudsman concluded he could not support the complainant's contention.

MINISTRY OF
LABOUR

(54) SUMMARY OF COMPLAINT

This complaint was brought to us by the solicitor for the complainant and her two children. The complainant and her children had been employed by a business until the business changed hands. All three were then laid off and received no holiday pay, notice or termination pay. The complainant's son was advised by the Employment Standards Branch that the Branch could do nothing for him as the former owner of the business had moved out of the Province.

A letter was sent to the Ministry advising it of our intention to investigate the complaint. In response, the Employment Standards Branch advised us that they had decided to reopen its investigation on the basis of information supplied in our letter to the Ministry. Two months later, the Employment Standards Branch sent us a copy of the report of its investigation to the complainant. The report indicated that the Branch had contacted the former owner, as well as the present owner, both of whom refused to assume responsibility for the amount of money owing to the complainant and her children. The Branch concluded that it was the former owner who was responsible for the payment of money owing to the complainant and her children. After several unsuccessful efforts to arrange a settlement with the former owner, the Branch concluded that there was nothing further it could do in this case. As the former owner did not reside in the Province, the Branch could not take any formal action against him.

Our Office concluded that the Employment Standards Branch had done all it could to assist the complainant with her problem and we advised her that the complaint against the Employment Standards Branch could not be supported.

(55) SUMMARY OF COMPLAINT

This complainant wrote that he was dissatisfied with an investigation conducted by the Employment Standards Branch of the Ministry of Labour relating to a complaint against his employer, the result of which was not favourable to him. He had been in the employ of the company for more than 10 years and claimed that he was entitled to eight weeks' notice prior to being laid off.

He complained that he was only given four weeks' notice prior to being laid off, and was therefore entitled to an additional four weeks' pay.

After notifying the Deputy Minister of our intention to investigate this complaint, and receiving the Ministry's position, meetings were held with personnel of the Employment Standards Branch, including the officer who had investigated the complaint. Records of the investigation were reviewed, and discussions were held with the complainant and a

representative of his union.

It was ascertained that on December 12, 1975, a notice was posted at the plant informing certain employees that they were to be laid off on January 9, 1976. The Employment Standards Act requires that employees with 10 years' service or more be given eight weeks' notice of lay-off.

The employees on the lay-off list with ten years service or more would have worked four weeks, (i.e. until January 9, 1976), and would have been paid for an additional four weeks (until February 6, 1976). It had been the practice for employees in that category to work the first four weeks and get paid for the last four weeks without having to work, providing the company had no other function for them to perform during that period. By this arrangement many employees remained at home and drew the final four weeks' pay.

The company had lost some money the previous year by allowing some employees to work for four weeks and paying them for eight. In an attempt to correct that situation, the company was making every effort to find other jobs in the plant for these employees rather than allowing them to go off for four weeks with full pay.

By an arrangement contained in the Collective Agreement called "Bumping", an employee with seniority can encroach upon the privileges of one less senior. When the senior employee is given notice of lay-off, he can "bump" the less senior. The notice of lay-off then applies to the less senior.

In the complainant's case, he had been bumped by a senior employee and was therefore placed on the lay-off list as of December 12, 1975. He therefore expected to go off on January 9, 1976 (at the end of four weeks) and draw full pay until February 6, 1976.

Sometime before January 9, 1976, there was a requisition for a man to work in another part of the plant. The complainant was then told by a personnel officer that a job had been found for him and that he would be required to work the full eight weeks. The complainant could have "bumped" an employee less senior to him, but did not.

He explained that when he was told by the personnel officer that he had to work the full eight weeks, he thought that he was no longer governed by the notice of lay-off which had begun on December 12, 1975. In other words, he thought that the notice of December 12, 1975 had been cancelled.

The personnel officer, however, stated that the lay-off notice had been amended as opposed to being cancelled, i.e. amended to require the complainant to work the full eight weeks.

The above information had been conveyed to the complainant by the Employment Standards Branch but he remained dissatisfied because he had not "bumped" a less senior employee who went on to receive eight weeks pay for only working four weeks. It appeared therefore, that his reason for not "bumping" the less senior people was his misunderstanding of the personnel officer's statements.

We concluded following our investigation that a complete investigation of the complaint had been conducted by the Employment Standards Branch and that its findings could not be faulted. The complaint was therefore found not to be supported and the parties were advised accordingly.

(56) SUMMARY OF COMPLAINT

The complainant outlined his concerns about labour practices in Ontario at a private hearing held in a southwestern Ontario city. We wrote to the Ontario Labour Relations Board outlining the concerns that the complainant had presented to us.

One of the complainant's concerns was with the international affiliations of Ontario trade unions. It was his contention that such affiliations were not in the best interests of union members in the Province. In a reply from the Labour Relations Board, it was pointed out that while national and international affiliations of trade unions are not regulated in Ontario, The Labour Relations Act has been designed to ensure responsibility on the part of the trade unions holding bargaining rights. The obligation on unions to act fairly in representing all the members of the bargaining unit, the prohibition on the use of intimidation to compel membership in unions and the requirement that unions supply to their members audited annual financial statements, were several examples cited as being designed to ensure that trade unions will act responsibly towards their members.

The complainant further objected to the existence of hiring halls. In the reply from the Labour Relations Board, the following comment was made:

"Hiring halls play an important role in the construction industry. With employers in this industry so transient and the projects so short-term, the hiring hall acts as a stabilizing force ensuring adequate employment for those who come to rely on their trade for their livelihood. The hiring hall, by limiting the number of people on call, ensures all those admitted to membership of an adequate number of hours of work to provide an acceptable annual income. In the industrial sector, employers themselves limit the number of people employed in an industry to the number of vacancies. The only thing novel about the hiring hall is that it performs this job for a group of employers not able to do so themselves."

It was also pointed out in the letter from the Labour Relations Board that section 60 of The Labour Relations Act requires unions operating hiring halls to do so in a manner that is not arbitrary, discriminatory or in bad faith.

The complainant had also advocated the creation of a Labour Relations Ombudsman, and this suggestion was communicated to the Labour Relations Board. In reply, it was indicated that the creation of such a position is currently under active consideration by the Ministry of Labour.

(57) SUMMARY OF COMPLAINT

This complainant contacted us, through her solicitor, as a result of her dissatisfaction with a decision of the Employment Standards Branch of the Ministry of Labour not to support her claim for unjust dismissal and non-payment of wages against an organization for which she had completed some work. An employee of the Branch had concluded that there was no "employer-employee" relationship, as required by The Employment Standards Act, between the complainant and the organization complained against which would entitle her to the assistance of the Branch. The Branch took the position that the complainant was engaged with the organization in question on a freelance basis, and that the organization could not be considered an employer as it exercised no control over her work, except as to quality.

We wrote to the Minister of Labour, subsequent to which a meeting was arranged between our Investigator, the Director and the Assistant Administrator of the Employment Standards Branch. As a result of the meeting, the Director agreed to reopen the complainant's file for further investigation. After re-investigation, the Director wrote to advise that the Branch had decided to confirm its earlier decision.

As a result of legal research conducted by our Director of Research, it was our Office's opinion that the Employment Standards Branch had not acted unreasonably in coming to its decision. This was particularly so in light of the fact that there was no evidence that any contract of employment had existed between the complainant and the organization complained against. The Employment Standards Act requires that an "employee" must supply services to an employer for wages and "wages" means any monetary remuneration paid by an employer to an employee under the terms of the contract of employment. We advised the complainant that we could not support the complaint.

CIVIL SERVICE COMMISSION

(58)

SUMMARY OF COMPLAINT

This complainant wrote to the Ombudsman with two complaints arising from his dismissal from the permanent faculty of a College of Applied Arts and Technology on November 2, 1973. The first complaint alleged wrongful dismissal and the other was against the Ontario Public Service Grievance Board which heard the grievance of wrongful dismissal.

The facts were as follows. The complainant was one of the original faculty members at the College. Having tried a number of courses in the field of communications, the complainant, in 1973, volunteered to participate in a special program of remedial reading designed to raise the abilities of entering students, all of whom were young women, aged 18 or 19 and embarking on secretarial or other vocational courses. The method of instruction entailed working with one student at a time in a small room.

In October, 1973, one of his students complained to a teacher that during one of the remedial reading sessions, the complainant had placed his hand on her leg while sitting beside her. The teacher then interviewed other female students and learned that some of them had had similar experiences which had unnerved and embarrassed them. As a result of these reports, the Departmental Chairman, in the presence of the Director of Personnel Services at the College, summoned the complainant to a meeting on November 2, 1973, and at this meeting the complainant was offered the choice of resigning immediately and receiving two months' salary or being dismissed without further notice or compensation. The complainant chose not to resign and three days after the meeting, received a registered letter from the Departmental Chairman notifying him of his immediate dismissal for "actions on your part totally unacceptable to the College."

On the advice of his lawyer, the complainant filed a grievance with the College and on November 21, 1973, the President of the College wrote to the complainant, advising him that his grievance was denied and confirming the dismissal of the complainant effective November 5, 1973.

On November 27, 1973, pursuant to the academic Memorandum of Understanding between the Ontario Council of Regents for the Colleges of Applied Arts and Technology and the Civil Service Association of Ontario, the Grievance Officer for the Association presented, on the complainant's behalf, an application to the Public Service Grievance Board for a hearing to determine whether the complainant had been wrongfully dismissed.

On January 16, 1974, the Board, composed of a Chairman and two part-time members, convened its hearing of the complainant's grievance. At this hearing, the complainant was represented by the Grievance Officer for the Civil Service Association of Ontario and the College was represented by a lawyer. The case for the College was presented on January 16 and the complainant gave evidence on February 8 without any other witnesses being called on his behalf.

On February 26, 1974, the complainant received the award of the Board upholding the dismissal and disallowing the grievance. The Board found that there was nothing tangible before it to suggest that the complainant's behaviour and competence had been anything but satisfactory from the time he was hired in 1967. As to the facts and appropriateness of the penalty of dismissal in light of the undisputed facts, the Board found that none of the girls who testified seemed to feel that the complainant had "made a pass", or had said anything untoward and further, that there were no gross sexual advances and no indication that such might have developed. The Board determined that it was nevertheless remarkable that the complainant's sensitivity did not alert him and cause him to realize where his conduct might lead and that in a College of the type and location as the one in question, there was no doubt that students and parents, as well as teachers and boards of governors, could be expected to take a serious view of the grievor's behaviour. The Board found that this was a case in which the severity of the punishment exceeded the severity of the offence and further, that the trivial hurt to any or all of the girls could hardly be equated with the hurt already suffered by the grievor in terms of ostracism, mental distress, unemployment in his profession and financial loss. The Board indicated that the College could hardly be expected to run the risk of censure, since at that point the problem would change from the unfortunate effects of dismissal to the unfortunate effects of failure to dismiss.

On April 30, 1974, the Grievance Officer for the Civil Service Association of Ontario wrote the Public Service Grievance Board on the complainant's behalf. The Grievance Officer took the position that the Board had failed to properly address itself to the question as to whether, having found the severity of the punishment meted out by the College to have exceeded the gravity of the offence, the Board should have substituted a lesser penalty than that of dismissal. The union accordingly requested the Board to reconvene the parties in order that the Board exercise this jurisdiction. The secretary of the Board replied to the Grievance Officer on May 28, advising that the Board, in the absence of new evidence, had no further jurisdiction in the matter and further, the Board had decided that "regardless of what lesser penalty might have resulted in another time in another place, the circumstances in this case left no alternative."

Our investigation proceeded in the following manner. Our then Director of Research examined the relevant documentation, including the Memorandum of Understanding and the decision of the Public Service Grievance Board. It was determined that, since the Memorandum of Understanding between the C.S.A.O. and the colleges provided that all differences respecting agreements would be submitted to arbitration before the Public Service Grievance Board, it was inappropriate for our Office to investigate any actions taken by the College against the complainant, even though the College is a "governmental organization" within the meaning of The Ombudsman Act. The Ombudsman resolved, however,

to investigate the actions and decisions of the Public Service Grievance Board, which was also determined to be a "governmental organization", and, accordingly, subject to the Ombudsman's powers of investigation and report.

In August, 1976, the Director of Research discussed with the Chairman of the Grievance Board and later with one of the members, their recollections of the proceedings of the Board and its deliberations, seeking their views as to whether the Board should have addressed itself to substituting a lesser penalty for that of dismissal. The Board members took the position, however, that since the Memorandum of Understanding provided that the decision of the Board was to be final, the Board was "functus officio" and, accordingly, lacked the requisite jurisdiction to reconsider, even should the Board agree that it was in error.

From the information gleaned during the course of our investigation of this complaint respecting the Board's award, it became apparent to the Ombudsman that there existed sufficient grounds for his making a report or recommendation which might adversely affect the College. Accordingly, on August 25, 1976, pursuant to Section 19(3) of The Ombudsman Act, a letter was sent by the Ombudsman to the Acting President of the College, with a copy to the Chairman of the Board of Governors, inviting the College to make representations. By letter dated September 8, 1976, the solicitor for the College submitted written representations and stated as follows:

"The circumstances were such that [the complainant] by his wrongful conduct, precluded the College from having him returned as a teacher, and there was no appropriate lesser penalty . . ."

On October 14, 1976, a further meeting was held at the Ombudsman's Office, between members of our staff and the Acting President of the College and the solicitor for the College. Following the meeting between the then Director of Research and the member of the Public Service Grievance Board, the Ombudsman decided to retain the services of an independent psychiatrist to determine whether the complainant was mentally capable of re-summing his former teaching duties in the event that the Ombudsman were to make a recommendation to the Public Service Grievance Board, with a view to securing the complainant's reinstatement. The complainant agreed to this and a psychiatrist carried out an assessment and prepared a report following a number of interviews with the complainant. In that report, the psychiatrist stated that, " . . . this individual is capable of returning to the teaching field. . . it is concluded that there would be no social or academic resentment if he returned to academic life." The psychiatrist also concluded that the touching of students, for which the complainant was dismissed, was "not a product of his emotional needs", and that he did not "knowingly carry out a series of acts which were sublimated sexual advances", but, " . . . [that these] were direct offshoots of the forceful direct methods [of teaching] used by the complainant." He

concluded that "there is no possibility that any repetition of [the] alleged behaviour would transpire in the future."

The Ombudsman then took the following action. An 18-page report was sent to the Chairman of the Public Service Grievance Board on April 15, 1977. In this report, the Ombudsman concluded that although the complainant's conduct was inexcusable, and the Board correct in finding his conduct to be just cause for discipline and serious enough to support the penalty of dismissal by the College, the Board, nevertheless, erred in failing to address itself to the question of whether it should have exercised its discretion to reduce the penalty to one which was just and reasonable in the circumstances. This conclusion was based largely on the Board's own considered assessment of the significance of the complainant's conduct.

In addressing himself to the second aspect of the complainant's contention against the Board, namely, that the complainant did not receive a fair hearing of his grievance, the Ombudsman reported that the Board had accorded the complainant a full and fair opportunity to present his grievance and that this aspect of his complaint was not supported by the facts.

The report concluded as follows:

"Having arrived at my conclusion that the Board failed to address itself to the question of whether it ought to exercise its discretion to substitute a lesser penalty, I am now faced with the difficulty that there may be no recommendation I could make which the Board will have any formal power to act upon. Were the Board to possess such power, the recommendation I would wish to make is that the Board reconsider its decision to the extent of addressing its mind to the exercise of its discretion to substitute a lesser penalty, in light of all the circumstances of the case. However, from the discussions that have taken place between Mr. Goodman, yourself, and Miss Wychowanec [a member of the Board] and from my Office's own research, it appears to me that the Board unfortunately has no power to formally reconsider its decisions in any respect, once they are arrived at and the award has issued.

It is therefore my recommendation that the original Board members meet on an unofficial basis, and communicate to the officials of [the] College responsible for decisions regarding personnel, the Board's view that, while the Board has no formal authority to reconsider its original decision, in view of my findings concerning the Board's award, the College should reinstate [the complainant] in

a position on its academic staff equivalent to the position of Associate Master, which he held at the time of his dismissal, without any compensation since the period of his dismissal from the College."

In his reply of May 26, on behalf of the Board, the Chairman advised, in part, as follows:

"The Board members are pointedly aware that the Board becomes functus officio at the moment a decision is issued. It could therefore incur just opprobrium and even legal action if it were to attempt to alter the terms of the previous award . . .

The Board finds it difficult, if not impossible, to distinguish between attempting to modify a decision, either by direction or by indirection. It does not draw such a distinction in the present instance.

This is not to be taken as a statement of disagreement or agreement with the opinion of the Ombudsman, but rather, and solely, that the Board members, with respect, decline the invitation to associate the Board with the request that is to be sent to the Board of Governors of the College by yourself."

On June 13, 1977, Mr. Maloney wrote the Chairman advising that his recommendation was premised on the fact that the Board, having rendered its decision, was functus officio, and, accordingly, possessed no formal authority to reconsider its original decision. He further advised that it was for this reason that he did not recommend that the Board alter or modify the arbitration award, but rather that the Board meet with those officials at the College responsible for decisions regarding personnel on an informal basis. The letter concluded as follows:

"You must know that I, as Ombudsman, would never recommend that a governmental organization pursue a course of action which I thought to be beyond that organization's authority or jurisdiction."

Copies of the Ombudsman's report to the Public Service Grievance Board were also sent to the Acting President of the College and to the Chairman of the Board of Governors on June 13 and their comments were invited. No response to these letters was received by our Office and in response to a telephone call that our Director of Investigations placed to the College to ascertain whether a reply would be forthcoming, we were advised that the Board of Governors had chosen not to respond.

The Ombudsman's report to the Public Service Grievance Board was sent to the complainant on August 9, 1977. In addition, the complainant was provided with copies of all subsequent correspondence exchanged between our Office and the Public Service Grievance Board and our letters to the College.

Although the Public Service Grievance Board is not responsible to the Chairman of Management Board of Cabinet, Management Board does provide the Public Service Grievance Board with administrative support and the Chairman of the Management Board would, if called upon, answer for the Public Service Grievance Board in the Legislature. Accordingly, on August 9, 1977, copies of the Ombudsman's report and subsequent correspondence were sent to the Honourable J. A. C. Auld, Chairman, Management Board of Cabinet, being the "Minister concerned" under Section 23(3).

The Honourable Mr. Auld replied by letter dated August 18, in part, as follows:

"After perusal of the file, I have decided to forward all the correspondence to my colleague, Attorney General of Ontario, since I can only conclude that the future disposition of this complaint must rest between the Ministry of the Attorney General and your Office. It is my belief that the Public Service Grievance Board acted correctly in declining to associate themselves with any suggestion that the original decision of the College and the Board should be set aside. I am requesting a legal opinion from the Attorney General as to the responsibility of duly constituted tribunals when their considered and collective judgment is questioned."

MINISTRY OF

NATURAL RESOURCES

(59) SUMMARY OF COMPLAINT

We were contacted by several cottage owners who complained that although they had been using a road in their subdivision to gain access to their cottages for over 20 years, a new owner of one of the lots took the position that the portion of the road which crossed his property was private and, therefore, he would not allow the complainants to cross his property unless they paid him a yearly fee.

The complainants alleged that the Ministry of Natural Resources, which prepared the Plan of Subdivision and sold the lots to the complainants, improperly omitted to designate this road as a public road in the Plan. They contended that if the road was public, the unco-operative neighbour would not be able to deny them access.

We informed the Deputy Minister of our intention to investigate and he extended the full assistance and co-operation of the Land Administration Branch to our Investigator.

The complainants argued that there were three bases on which it was possible to designate the road as public. First, it was claimed that the road was built on Crown land with the permission of Ministry officials and prior to the Crown survey being completed. After obtaining evidence under oath from a former cottage owner and examining the documents made available by the complainants, we concluded that permission was indeed given by a Ministry official prior to the time the Crown survey was completed to build the road up to the subdivision, but no further. For this argument to have been substantiated, the road crossing the subdivision, which was built by the complainants, would have to be proven to have been public prior to the date the lots were patented. This fact would have to be found in order to amend the Plan of Subdivision accordingly. We were unable to conclude that the necessary requirement of dedication by the Crown of this road was evident.

Second, the complainants contended that their road was a colonization road and, accordingly, was public pursuant to The Public Lands Act. This Act does not make a road that is not otherwise a colonization road into one. After examining the law relating to colonization roads, it was determined that this particular road did not meet the requirements of a colonization road and, accordingly, the complaint could not be supported on this basis.

Finally, the complainants claimed that as their Crown patents contained a reservation to the Crown of 10% of the acreage granted by the Crown patent for roads and the right to lay out the same where the Crown deems it necessary, that the road in question was public by operation of that reservation clause. It is the policy of the Ministry to exercise this clause only if it would be in the general public interest to do so. This did not appear to be such a case, and moreover, the complainants clearly purchased the property with the full knowledge and understanding that only water access would be available to them. Accordingly, this final aspect of their complaint could not be supported.

The complainants were accordingly advised that their complaint against the Ministry could not be supported.

(60) SUMMARY OF COMPLAINT

This complainant contended that in 1936, his father and others had built a hunting camp on part of a lot in a Township in the Georgian Bay area. He stated that he had been paying both land and school taxes on the building and property since the camp was built. In 1975 some members of the hunting club inquired about maps in the Ministry of Natural Resources regional office and it came to the attention of the Chief Land Officer that the camp did not have a land use permit.

The complainant stated his belief that in the mid-1960's, it became Ministry policy that all hunting camps had to obtain a land use permit and renew it annually at a minimal fee. The complainant felt that, had the Ministry sent follow-up letters to ensure that the members of the club were aware of the new policy, he and the other members would not be in the situation they were then faced with, namely the removal of the camp. The complainant argued that tearing down the club simply because of an honest misunderstanding was unjust. He said he would gladly pay to the Ministry all monies owing for retroactive land use permits and any other necessary expenses in order to keep the Camp operating.

After studying the relevant provisions of The Public Lands Act concerning the granting of licences and the consequences of unauthorized occupation, our Investigator determined that since the camp in question did not have a land use permit to occupy the land, then, in law, the Ministry had the right to remove it. Furthermore, we determined that it was not the responsibility of the Ministry to ensure that individuals have authority for their occupation, rather it is the responsibility of the individual to obtain authority prior to taking up any form of occupation on Crown land.

Our Investigator also inspected the camp in question and interviewed officials of the Ministry of Revenue, the local Tax Assessment office and officials of the local school board.

Our investigation revealed that provincial land tax had never been paid on either the building or the property, and that the alleged land taxes and school taxes that the complainant had been paying were not land taxes at all, but rather school taxes for the local school board.

It was also determined that a Ministerial policy change in 1964 prohibited the issuance of any further land use permits for hunting camp purposes in the area in question and that since that time, there had been no such permits issued in the area.

Our investigation also revealed that the area was saturated with hunting camps and subject to extremely heavy day hunting by transients.

We therefore concluded that the complainant's grievance was unsupportable since the Ministry was acting in accordance with its reasonable administrative policies under the provisions of The Public Lands Act, and that for the Ministry to authorize a land use permit for this particular club would have been inconsistent with the treatment accorded to others in similar situations in the area.

(61) SUMMARY OF COMPLAINT

This complaint concerned a refusal by the Ministry of Natural Resources to allow the complainant a permit to reconstruct his dam on a river in Ontario. Apparently, the permit was denied on the grounds that the river was an important area for rainbow trout and dams on the river have a warming effect on the water which is detrimental to cold-water fish such as trout. The Ministry was doing its utmost to prohibit any further construction of dams on the river.

The complainant was of the view that since his dam had existed in the past, and since his property had never been restricted to the public, he should be given special consideration and be allowed a permit to rebuild this dam.

We advised the Ministry of the complainant's contentions and received a response in which the Ministry stated its position that it regarded this particular river as being of major importance to the Province in connection with the protection of cold-water species of fish. Because of its importance, the Ministry expressed its opposition to the construction of any further dams on the river. We were advised that when the Ministry assesses an individual application it considers the well-being of the watershed as a whole. We were also advised that applications made for approval of other sites for in-stream dams on this river and in the vicinity of the site proposed by the complainant had also been refused by the Ministry for exactly the same reasons.

Our investigator travelled to the area in question and interviewed officials of the Ministry's district office and reviewed the relevant files. The Ministry's stated position was confirmed and it was also learned that this position is flexible where agricultural production is involved, but not in the case of private recreational purposes. We were also advised that even in a case where a reservoir is needed for agricultural production, only by-pass ponds are allowed, and then only on the tributaries of this particular river.

A review of the Ministry's files and other documents relating to this matter led us to conclude that the complainant had not been dealt with in an arbitrary or discriminatory manner and, under the circumstances, we were unable to support this complaint.

SUMMARY OF COMPLAINT

These complainants contended, by letter, that several winters ago, the west bank of the East Branch of a stream in Eastern Ontario was breached, by persons unknown, in the vicinity of the present diversion, thereby permitting water to flow to the West Branch. Since the natural gradient, at this point, is considerably steeper towards the West Branch, once the water began flowing through the diversion, natural erosion would ensure such flow continued, and, in fact, the proportion of water flowing down the West Branch would increase with time.

This "diversion" was situated upstream from the complainant's property on land held by the Ministry of Natural Resources.

Once our involvement in this case became known, we also received representations from property owners on the West Branch. Since 1973, the East Branch owners claimed that 100% of the flow should go down the East Branch, while the West Branch owners contended that there had always been some flow from the East Branch to the West Branch.

Our investigation revealed that complaints about this stream had been made sporadically to governmental officials for several years. A Ministry official moved stones at the diversion site on several occasions in an attempt to regulate the water flow, and warned nearby individuals not to interfere with the stream flow.

Although the issue apparently subsided for a few years, it again became a serious dispute shortly after one of the complainants moved into the area. All other major principals had lived on their respective properties for a substantial period of time. Until the complaint had reached our Office, riparian owners on both Branches moved rocks at the diversion site on many occasions in an attempt to adjust the flow one way or the other. Other residents in the area, although not riparian owners on the stream, may have also moved rocks at the diversion site without the knowledge of either the East Branch or West Branch owners, most likely simply to aggravate the situation which had become something of a "cause célèbre."

In June, 1977, two Investigators commenced an intensive review of this entire problem. A title search was undertaken in the local Registry Offices to identify all riparian owners. The local Ministry files were reviewed in detail. An independent hydrologist who had previously done hydrology studies in the area, was asked for his opinion. After an on-site inspection and a review of his earlier notes, he concluded that the diversion appeared to be completely natural. A meeting was then held between our Investigators and several Ministry officials to discuss the problem.

Approximately two dozen local residents were interviewed in an attempt to establish historical stream flow development. In addition, a meeting was held at our office attended by Ministry personnel and certain of the complainants to discuss possible solutions to the problem.

During our investigation there were many assertions, allegations and accusations made by the many individuals involved in the dispute. Many telephone calls and letters were sent to Ministry officials at all levels, and Ministry officials visited the area repeatedly in an attempt to resolve the problem.

Although both sides to the dispute claimed to have firm evidence supporting their respective positions, there appeared to be little consensus on the historical apportionment of flow between the East and West Branches. Historically, it appeared that problems with stream flow, particularly after heavy flooding, were settled amicably among local neighbours. More recently, there was only agreement that Spring flooding caused spill-over from the East Branch to the West Branch.

In its attempts to resolve the dispute between East and West Branch owners, two actions of the Ministry deserve special note. First, at one time, "obstructions" were removed by Ministry officials using a backhoe and bulldozer at the diversion site. This action followed the Minister's letter to involved local residents. Approximately 10-12 cubic yards of rock were removed from the stream bed and covered with topsoil at some distance from the stream site itself.

Counsel for one of the complainants immediately objected to the Ministry that there had been no meeting prior to the above operation, and a public meeting was subsequently held. At this meeting, aside from presentations by a number of the riparian owners and their respective counsel, two conflicting reports were tabled by Ministry engineers. The two reports were supportive of the positions of the West Branch and the East Branch property owners respectively. Although the meeting ended with no firm resolution, it did appear, at the time, to have broken the ground for future compromise between the disputing parties.

Upon interviewing the authors of these two engineering reports, each engineer agreed that the other could have been correct; that is, neither engineer could state with certainty that his report was definitive and represented the only possible course of historical events. Both admitted that in this kind of study, conclusions are based on the most probable or most likely explanation.

The existence of a diversion, and the flow, if any, through such a diversion, prior to 1971, were moot questions which appeared incapable of resolution six years later.

When the above information was studied by the Ombudsman, he was unable to seriously fault the Ministry for any of its actions or alleged omissions and, as a result, the complaint was found to be unsupported. Accordingly, it was determined that there was no justification for a recommendation being

made under Section 22(3) of The Ombudsman Act.

However, since the Ministry had clearly indicated that it would appreciate any assistance which we might offer, the Ombudsman made a suggestion that, on the basis of the evidence before him, the best and fairest solution to the problem would be an apportionment of approximately two-thirds of the flow to the East Branch and approximately one-third of the flow to the West Branch. It was made quite explicit that this suggestion was made solely because the Ministry had requested us to suggest any resolution which appeared fair and equitable in light of our investigation. We also suggested that the Ministry might wish to give consideration to establishing a practice of holding public meetings before, rather than after, any substantial work on stream beds was undertaken.

Subsequent to our report, the Ministry had a concrete weir constructed at the diversion site to permanently regulate the water flow in the two Branches.

(63) SUMMARY OF COMPLAINT

The complainant, who owns property in western Ontario, complained to us about the issuance of a gravel pit licence by the Ministry of Natural Resources to the local township which owned property abutting that of the complainant.

This complaint was against both the Ministry, for issuing the licence to the local township without requiring procedures relating to public hearings for new gravel pit operations as set forth in The Pits and Quarries Control Act to be followed, and also against the Ontario Municipal Board (OMB) in connection with its approval in June, 1975, to re-zone the township gravel site property from A2-General Agriculture to M3-Quarry Industrial.

We noted that the complainant had requested reconsideration of the original OMB decision and that the decision on the application for reconsideration was handed down in December, 1976. The Board's decision was to dismiss the complainant's application "...upon receipt of an agreement between the two local townships to improve concession roads so as to accommodate the proposed truck traffic to a standard approved by the Ministry of Natural Resources."

Our Investigator interviewed several officials of the Ministry and the OMB and visited the complainant's property with a member of our legal staff.

The Ministry's position was that the pit in question had been determined to be an operating pit, and therefore section 5 of The Pits and Quarries Control Act, relating to hearings for new gravel pit operations did not apply to the application for a licence. The Ministry pointed out that this was a part-time operation and that a condition attached to the issuance of the licence was that no more than 150,000 tons would be removed from the pit in any calendar year. We verified this information from Ministry files.

Our investigation also revealed that the former owner of the complainant's property had signed a statement to the effect that he had removed gravel from his property, prior to the property being sold, in part to the local township and in part to the complainant. It was pointed out that a gravel pit was in use before there was any housing in the area and that most of the gravel was used in the construction of homes and roads in the area.

On the basis of that statement and other signed statements, we concluded that the pit in question satisfied the qualifications for an existing pit which was in operation sometime during the two years previous to the application for a licence, and, accordingly, we could not support the complaint against the Ministry.

Concerning the complaint against the OMB, the complainant contended that the Board gave inadequate consideration to environmental concerns, including the agricultural value of the land and the fact that existing commercial pits could satisfy the township's gravel requirements.

We noted that the OMB had approved a local township by-law, ruling in part that "since the site had previously been used for that purpose, and that the demand for gravel is increasing, the Board will approve the application." We also noted that the original Board decision stated that "the evidence indicates that while some of the land within the 68 acre parcel could be used for agricultural purposes, the subject 15 acres was not good farm land."

We also ascertained that the County Planning Board considered the township by-law to be in conformity with the intent of its official plan and that the local Conservation Authority also had no objection to the by-law.

We noted that the application to the OMB for reconsideration of its decision stated that considerable issue was taken with the original findings of the Board and that "the weight of evidence before the Board seems to indicate the site is best suited for extraction of gravel and of very little use for agricultural purposes." The Board's decision went on to state:

"While from the evidence adduced herein it appears that the entire holding is fairly successful for grain crops, the Board finds that one may still conclude, on the evidence, that the site is desirable for the extraction of gravel. No injustice or unfairness or error has been demonstrated to this Board so as to justify a re-hearing. Rather these neighbours do not like the approval since they do not wish a gravel pit in this location."

It was our opinion that there was sufficient evidence before the Board from which it could conclude that although the area is "fairly successful for grain crops," it is "desirable" for the extraction of gravel. We therefore could not find that the decision of the Board was unreasonable, unjust, oppressive or improperly discriminatory, as set out in Section 22(1) of The Ombudsman Act.

We were therefore unable to support the complaint against the Ministry or the OMB.

(64) SUMMARY OF COMPLAINT

This complainant, interviewed by members of our Rural, Agricultural and Municipal Services Directorate in June, 1977, complained about a dock on a lake in Northern Ontario.

The dock was built in 1938 by the Federal Department of Public Works. In 1969, the Department declared the dock surplus to its needs and ownership of the structure was transferred to the Provincial Ministry of Natural Resources.

In 1975, Ministry staff determined that the dock was in a rapidly deteriorating condition. Since the Ministry had, in 1969, acquired the adjacent shoreline, which it felt provided adequate recreational boat launching and bathing facilities, it decided to dismantle the dock. In the summer of 1976, employees of the Junior Ranger Program of the Ministry removed the decking from the dock, but they were unable to dismantle the cribbing and pilings.

When the complainant contacted us during one of our private hearings in Northern Ontario, he said he and other residents of the area were concerned about the safety of the remnants of the dock. Young people in the community were using the dock for fishing and the complainant expressed fears that an accident could easily occur. The complainant also said that the partly-dismantled condition of the dock negatively affected the aesthetics of the shoreline.

The complainant contacted his M.P.P. about the situation and the Member sought to have the problem resolved. Subsequently, Ministry employees informed the M.P.P. that final dismantling of the dock would take place in early 1977.

When we visited the area in June, 1977, the time at which the complainant contacted us, the dock had not been dismantled.

When the complainant advised us in July, 1977, that no action had been taken, we informed the Ministry of our intention to investigate, based on the complainant's contention that the dock should either be rebuilt or completely dismantled.

In mid-August, 1977, the Ministry advised our Office that because of the condition of the dock, it was not considered feasible to rebuild the structure. The Ministry added that

tenders had been requested for the completion of the dismantling of the dock and that a completion date of not later than September 30, 1977, had been set for terminating the project.

We advised the complainant of the Ministry intentions and were later advised by the Deputy Minister that the work had been completed on September 23, 1977.

MINISTRY OF

REVENUE

(65) SUMMARY OF COMPLAINT

The complainant was interviewed at our office at which time he related the particulars of his Ontario Home Buyers Grant complaint. This complaint was one of over 100 which the Ombudsman has received involving this particular government grant program.

The complainant's application for an Ontario Home Buyers Grant was refused by the Ministry of Revenue because it believed he was not entitled to vacant possession of his housing unit until April, 1976, at which time the vendor vacated the complainant's premises. The Ministry pointed out that in order to be eligible for the grant, the purchaser must have been entitled to immediate vacant possession of his housing unit within the eligibility period, i.e. April 8 to December 31, 1975.

It was the complainant's contention that he completed the purchase of his housing unit in December, 1975, and that he permitted the vendor to remain in the housing unit until April, 1976 because the vendor had to undergo surgery. Notwithstanding the fact that he allowed the vendor to remain in the house after the period of eligibility, the complainant contended that he ought to be eligible for the grant because he was entitled to immediate vacant possession of his unit on December 30, 1975, which date was within the eligibility period.

After the Ombudsman notified the Deputy Minister of his intention to investigate this matter, our Investigator spoke with the complainant on several occasions to obtain information relevant to his problem. Subsequently, our Investigator spoke with a solicitor with the Ministry and requested that the Ministry review the facts of this case, bearing in mind the facts of another similar Ontario Home Buyers Grant complaint investigated by our office.

It was pointed out to the Ministry solicitor that although the facts of the two cases appeared to be similar, one complainant received the grant while this particular complainant did not.

Soon thereafter, the Ombudsman received a letter from the Deputy Minister stating that this complainant's application for the Ontario Home Buyers Grant had been approved. Reporting letters were sent to the Ministry and the complainant.

The complainant replied to our Investigator and acknowledged receipt of a \$1,000 cheque from the Ministry, which represented the initial grant payment. He continued,

"I would like to take this opportunity to thank yourself and co-workers at the Office of the Ombudsman for your assistance and dedicated effort which made it possible for me to receive my grant."

(66) SUMMARY OF COMPLAINT

The complainant wrote to our office with two problems relating to the assessment of her property for the years 1975 and 1976. The complainant was dissatisfied that the amount of the

assessment had been increased, and she also complained that the Ministry of Revenue had declined to supply written reasons for the increase in the assessment.

It was determined by our Legal Directorate that the first aspect of the complaint, relating to the amount of the assessment, was outside of our jurisdiction as it had been ruled upon by the courts. However, we concluded that the aspect of the complaint concerning the Ministry's refusal to supply the complainant with reasons for the increase in the assessment should be investigated.

We informed the Deputy Minister of the substance of the complaint and in his reply he outlined the reasons for the increase in the assessment, and also advised our Office that the complainant had appealed the assessment to the Assessment Review Court on a number of occasions and, on each occasion, the Assessment Review Court sustained the assessment. We were informed that the complainant had demanded from the courts an explanation as to why the assessments were revised by the assessors in the first instance, and that in all instances the courts had declined to give such explanation. It was further indicated that the complainant had admitted before the courts that she had been advised by the assessors as to which improvements had been valued and the impact of each adjustment to the assessment.

The Ministry was of the view that the complainant was apparently not satisfied with the explanation given by the assessors and demanded that the courts give detailed information in written form. The Deputy Minister stated that the Assessment Office was ready and willing to give the complainant any further information requested, but, for some reason, the complainant wished to receive the information from the courts.

Our Investigator then arranged a meeting between the complainant and the Regional Assessment Commissioner.

After this meeting, the complainant informed us that she had received the written reasons she requested and she advised our office that her complaint was resolved to her satisfaction. She expressed her appreciation for our assistance.

MINISTRY OF

THE SOLICITOR GENERAL

(67) SUMMARY OF COMPLAINT

This complaint was brought to our attention by a lawyer who was concerned about the practice of fingerprinting by police forces. He alleged that three sets of the fingerprints of an accused are taken by police forces in Ontario; one for its own use, one for the R.C.M.P. and the third for the Federal Bureau of Investigation in the United States. He considered it particularly objectionable that fingerprints should be forwarded to the F.B.I. as a matter of course.

This complaint was taken up with the Chairman of the Ontario Police Commission, whose response included the following comments:

"The practice may vary as to how many copies of fingerprints are taken. In the Ontario Provincial Police I believe that one copy is retained at District Headquarters, one goes to the central files of the O.P.P., and the other copy goes to the Royal Canadian Mounted Police Headquarters at Ottawa which maintains the repository for the Dominion. In the case of Municipal Police Forces, most Forces only take two copies, one for the local Police file and the other for transmission to the R.C.M.P. at Ottawa. From the above it is seen that there is no automatic transmission of fingerprints of arrested persons to the United States authorities. It should be stated, however, that where a Canadian is arrested in the United States, or where it is believed that the arrested person, though an American, is engaged in criminal activities in the Dominion of Canada, Washington may request a check of fingerprints on file at Ottawa for identification purposes, and, likewise, the R.C.M.P. receives similar accommodation from Washington in respect to either Americans arrested in Canada, or Canadians suspected of criminal activities in the United States....

It may be of interest to you to know that this Commission received objections to the practice of the Police in some areas retaining the fingerprints on file of persons who have subsequently been acquitted, for one reason or another, at trial. As a result of this, all Police Forces in Ontario were instructed to deliver up, on request, to the accused person in such a case the fingerprints held by the Force, and to obtain from Ottawa the fingerprints which have been filed there so that these

could also be delivered to the accused person. As this may be a matter of Federal law, there is some question as to whether the direction given by this Commission is binding, but I am satisfied that it is generally observed in the Province of Ontario as we have had no complaints for almost a year."

The complainant was advised by letter of this response and he did not reply to dispute the statements of the Ontario Police Commission.

(68) SUMMARY OF COMPLAINT

This complainant's problem concerned a member of the Ontario Provincial Police (OPP) and the Ontario Police Commission (OPC). He contended that, as a result of a confrontation with an OPP officer, he was subjected to excessive force, further aggravating his already injured back. He also alleged that the OPC had improperly decided not to pursue his complaint and that it did not consider all the information he filed with it.

It was determined that, on the morning that the incident occurred, two youths came onto the complainant's property. The complainant, as a result of certain fears relating to a previous break-in and threats made by his neighbour, telephoned the police, then took a rifle outside and confronted the youths. The complainant pointed the rifle at the youths and ordered them not to move until the police arrived. When the officer arrived on the scene, he observed the complainant pointing the weapon at the two young men. The officer asked the complainant if the gun was loaded and the complainant replied in the affirmative. The OPP officer, through previous calls, knew both the complainant and his neighbour. The officer then ordered the complainant to put the rifle down. The complainant refused to comply and he was subsequently ordered to lay the weapon down a second and third time. On the third request, the complainant put the rifle down and stood on it and refused to back away. The officer by this time had manoeuvred his way up to the complainant and pushed him off the gun and seized it.

As a result of this action, the complainant was charged with "dangerous use of a firearm" and remanded to a psychiatric facility for 30 days and then returned, tried and convicted. This conviction was later quashed due to a defect in the information. Due to the expiry of the statutory limitation period, the complainant was not able to sue the OPP officer, but he pursued his complaint with the OPC. The Commission wrote the complainant, advising him that the relevant limitation period precluded action under The Police Act against the officer, and that he should seek a lawyer's advice regarding the laying of a criminal charge.

The Commission's position as outlined to us was that the complainant admitted carrying a loaded gun, did not obey the officer's instructions, and therefore the weapon had to be removed from him by force. The Commission did not consider this act of force to be excessive.

Investigators from our office contacted and discussed this case with the complainant, the OPP officer involved, a representative of the OPC and the complainant's doctor. It was apparent that there was general agreement as to the occurrence of events in question. The Investigators learned that the Commissioner of the OPP had also requested an investigation which failed to add any new information. The complainant did not mention at his trial that the officer used excessive force. Our Investigators contacted the complainant's doctor who related 1) that it was doubtful that the complainant's back injury was caused by the assault, 2) that the complainant had previously suffered from a degenerative disc disease, aggravated by the complainant being overweight, and 3) that the complainant had placed a strain on his back by engaging in heavy work over the years, which had been coupled with a recent fall at a supermarket.

Our Investigators concluded, after interviewing the OPP officer, that 1) he was an experienced policeman who acted in the interest of public safety, 2) that he was attempting to keep the peace to the best of his professional ability, and 3) that no excessive force had been exercised. Our Investigators also determined that the OPC had conducted a fair, thorough investigation in the this matter and considered all information that the complainant had filed for its attention.

This complaint was found to be unsupported and the complainant and the Ontario Police Commission were notified accordingly.

MINISTRY OF

TRANSPORTATION AND COMMUNICATIONS

(69) SUMMARY OF COMPLAINT

These complainants contacted us during hearings in Western Ontario. They felt that the refusal by the Ministry of Transportation and Communications for permission to erect a "finger sign" indicating their store by name was unjust. The complainants contended that since similar signs stating "resort area" and indicating a camp or inn had been permitted by the Ministry, the sign they requested permission to post should also have been allowed. They contended that their store was of equal importance to the travelling public since it carried camping supplies and they said that they were losing business because of the absence of a sign.

The Ministry had refused permission to post a sign, giving as its reason that it was a policy of the Ministry not to erect private business signs on a highway right-of-way.

The complainants acknowledged that it would be possible for them to post a much larger sign on private property in the vicinity of the intersection, but they said that this option was unattractive because it would involve greater cost and would detract from the local scenery.

In reply to our section 19(1) letter to the Ministry, the Deputy Minister stated that the complainants request had been denied because it was contrary to regulations. He stated that the Ministry's policy had been developed "through considerable experience over a number of years and is administered uniformly throughout the Province." The Deputy Minister indicated that a reason for the policy was that if private signs were allowed, the intersections would be cluttered and the travelling public would be distracted and consequently road safety would be affected. The only exception the Ministry made to this policy was for those signs which directly related to the tourist industry.

As part of our investigation, we researched the relevant legislation. It appeared that the posting of signs such as the complainants proposed could only be done by permit. Under section 31(11) of The Public Transportation and Highway Improvement Act, R.S.O. 1970, Chapter 201, the Minister of Transportation is given discretion to issue permits "in such form and upon such terms and conditions as he considers proper."

Our investigation revealed that the Ministry has delineated terms and conditions for two types of signs -- "Guide Signs" and "Field Advertising Signs." The former relates to tourist information and the latter to the advertising of a business not conducted, or a product or service not available, upon the property upon which the sign is posted. Guide signs are considered "official" and may be posted in a location such as the one the complainants requested.

On the other hand, field advertising signs cannot be placed on a highway right-of-way nor within 300 feet of the nearest limit of a road, street or railway that intersects a highway at grade.

After the investigation of the Minister's decision not to issue a permit for the complainants' sign, the Ombudsman concluded that there was no evidence to suggest that the Minister exercised his discretion for an improper purpose or on irrelevant grounds or took into account irrelevant considerations. It was the Ombudsman's conclusion that the policy reasons given by the Ministry for refusing the permit had merit and that the Minister, in not allowing an exception, was applying the policy of the Ministry uniformly.

Accordingly, the Ombudsman advised the complainants that he could not make a recommendation in this matter as the Ministry did not, in his opinion, act in any way which should be impugned under the provisions of The Ombudsman Act.

(70)

SUMMARY OF COMPLAINT

The complainant contended that in 1971 the Ministry of Transportation and Communications purchased some of his property in order to enable the reconstruction of an adjacent highway. The complainant owned four adjoining lots adjacent to the highway in question. He contended that the Ministry had not lived up to an agreement that there would be provision for drainage of water away from his property which had previously drained into a large open ditch.

Our Investigator visited the complainant's property and met with Ministry representatives. As a result of this meeting, the complainant agreed to allow Ministry personnel onto his property in order to lower a section of his driveway so that water could flow in a southerly direction away from his property.

Our Office subsequently received a letter from the complainant advising that all necessary action had been taken by the Ministry and that no further assistance on our part was required.

(71)

SUMMARY OF COMPLAINT

The complainant, writing on behalf of a women's group, alleged that a hazardous condition existed by virtue of the continued use of a Bailey bridge on a secondary highway in Northern Ontario. She contended that various requests for replacement of the bridge had resulted in promises by the then Minister of Transportation and Communications for additional signs and warning devices and a study on replacement of the bridge. This had transpired two years previously and no move appeared to have been made to replace the bridge.

In response to our notification of our intent to investigate this grievance, the Deputy Minister advised us that:

"The present bailey bridge was erected in 1965, following the collapse of the original structure. Because it was intended as a temporary facility, pending permanent replacement, the bailey was positioned slightly off-set from the original bridge location, necessitating a short realignment of the highway. Although the approach visibility is substandard, the road carries low traffic volumes and few accidents have occurred as a result."

We learned that, prompted by many requests in the past several years, the Ministry had taken the following steps:

"The approach signing to the structure has been reviewed and improved to provide adequate warning of the bridge and the bailey bridge itself has been examined and found to be in good condition. The site has been tested, pre-engineering studies carried out, and the replacement of the bridge by a permanent two lane bridge on the original alignment has been included in this Ministry's five year construction program."

Our Investigator spoke with representatives of the Structural and Planning Department of the Northern Regional Office of the Ministry and learned that design for a replacement structure is well underway. In a subsequent letter from the Ministry's Northern Regional Office, we learned that preliminary drawings had been forwarded to several government agencies for their approval. Also, design work was to be completed by December, 1977 with construction currently scheduled for 1978.

The above information was reported to the complainant who indicated her satisfaction and stated that no further investigation was necessary.

(72) SUMMARY OF COMPLAINT

The complainant was interviewed at a private hearing in Northern Ontario. His complaint against the Ministry of Transportation and Communications concerned a problem with his well.

In 1974, he complained to the Ministry that the construction of an expressway near his home interfered with the source of water to his well. In fact, he complained that the well dried up completely.

Later that year, following an investigation of the complaint by Ministry officials, he was advised that the Ministry had

instructed a private company to install a new well on his property. The new well was subsequently installed.

However, in May, 1975, the complainant began to notice iron deposits in the water which were discolouring the family's dishes and clothes and generally turning articles a brownish-red colour. After receiving an estimate from a private company as to the cost of rectifying his well problem, the complainant registered a complaint with the Ministry's District Office, advising that the iron content in his well was beyond acceptable standards.

The complainant contended that the Ministry was responsible for the iron content in his well water and, therefore, it was his opinion that the Ministry should pay for the installation of a filtration system to prevent further discolouration of the water.

The Ombudsman notified the Ministry of his intention to investigate this matter and received a response.

Subsequently, our Investigator spoke with the Assistant Claims Administrator of the Ministry concerning the complainant's well water. The Assistant Claims Administrator agreed to have the Ministry of the Environment attempt to account for the existence of the iron deposits in the well water.

In addition to examining the contents of the Ministry of the Environment's report, our Investigator acquired further information from the complainant's wife, and the President and General Manager of a private company in Northern Ontario which specializes in water quality and a Water Treatment Engineer from another Ministry.

After reviewing all the available information, the Ombudsman found that there existed sufficient grounds for the making of a report and recommendation which could adversely affect the Ministry of Transportation and Communications. Consequently, the Ombudsman wrote to the Deputy Minister and accorded him the opportunity to make representations respecting the possible adverse report.

Later that month, the Ombudsman received a letter from the Deputy Minister stating that:

"I am on today's date instructing our Insurance and Claims Section to contact the Ministry of the Environment to ascertain where the filtration system . . . can be obtained. I assure you that we will make every effort to see that [the complainant] is supplied with water which is of a quality equivalent to that which he had prior to the construction."

(73) SUMMARY OF COMPLAINT

The complainant came to our private hearings in Eastern Ontario early in 1977.

He was upset about the condition of fencing between his farm property and three properties which had been purchased by the Ministry of Transportation and Communications a few years before. He wished to pasture cattle on the land in the spring and had written to the Ministry early in the fall of 1976 requesting financial assistance to repair the fencing.

The farmer complained about the Ministry's apparent lack of concern with respect to his request.

A member of our staff contacted the District Engineer for the Ministry who, in turn, arranged to meet with the complainant to discuss the problem with him. The complainant's letter had apparently been lost in the mail and had never reached the Property Management office of the Ministry.

We were advised in due course that the Ministry and the complainant had arrived at an agreement that was satisfactory to both parties.

MINISTRY OF

TREASURY ECONOMICS AND INTERGOVERNMENTAL AFFAIRS

(74) SUMMARY OF COMPLAINT

This complainant wrote our office complaining of an alleged breach of The Ontario Municipal Board Act which he drew to the attention of the Ministry of Treasury, Economic and Intergovernmental Affairs, and which he alleged the Ministry neglected to investigate. The complaint concerned the funding for re-development in the centre of an Eastern Ontario city.

The complainant said that the estimated costs to the city for servicing the re-development ranged from \$575,000 to well over \$600,000. He produced photocopies of letters from the City Treasurer dated August 18, 1972, which indicated that the city's reserve funds did not meet the lowest estimate. He pointed out that the parking reserve fund of \$230,700 could not be used for purposes other than parking without the consent of the Minister. He alleged that, lacking sufficient funds, the city should have referred the matter to The Ontario Municipal Board for approval but that, despite the requirements of The Ontario Municipal Board Act, the city completed an option agreement with the developer on November 24, 1972. The complainant alleged that he drew the matter to the attention of the Provincial Treasurer on a number of occasions but had not received a satisfactory reply as to why the Ministry omitted to investigate or to correct the situation.

Our Investigator interviewed an official of the Ministry who indicated that municipalities function under authority of the Legislature. He was told that, when the Ministry becomes aware of apparent breaches of the law, it has been its practice to bring such breaches to the attention of the municipality. A letter from the Provincial Treasurer, dated January 26, 1973 indicated that the matter had been investigated and that there did not appear to be any contravention of the Act.

Our Investigator visited the City Treasurer and obtained evidence concerning the funding of the project. Evidence showed that the city had reserve funds available in the amount of \$348,018, as follows:

(a)	Sale of building	\$138,860
(b)	Sale of building	42,630
(c)	Sale of industrial park	113,270
(d)	Sale of various civic-owned properties	53,258

In addition, there was \$300,000 available from the developer as the purchase price of other civic-owned lands and this was included in the agreement between the city and the developer.

Against these funds, the final cost of the project was \$494,653.32. This was the cost of the provision by the city of basic services to the project. As a result, therefore, funds available were well in excess of the expenditures, and it was not contemplated that any portions of the cost would need to be raised in subsequent years or would be provided by the issue of debentures. It was not, therefore, necessary for the city to seek approval under Section 64 of The Ontario Municipal Board Act.

In addition, the City Treasurer said that, while no shared revenue had come to the city from the project as yet, city auditors were working with the developer on an on-going basis to review the possibility of revenue. Further, the City Treasurer estimated that tax revenue from the area, formerly in the order of \$100,000 annually, was now closer to \$600,000. He said that this increase in assessment was desirable under the new land tax system and it completely reversed what was considered to be the former unsatisfactory trend of a larger increase in residential, rather than commercial assessment.

After reviewing the evidence obtained, we concluded that we were unable to support the complainant's contention that the Ministry had neglected to properly investigate the alleged breach of The Ontario Municipal Board Act.

THE WORKMEN'S COMPENSATION BOARD

(75) SUMMARY OF COMPLAINT

While at work, this complainant fell on an oily patch on the floor, landing on his buttocks and wrist. The fall was witnessed by the complainant's helper and reported to his foreman. The complainant experienced immediate pain in his wrist and the small of his back; however, he continued to work.

Approximately three days later, the pain in his back became worse and he also began to experience pains radiating down his leg.

About three weeks following the accident, the complainant sought treatment from a chiropractor for pain in the low back and the right ankle. He saw the chiropractor on a regular basis for about a month.

The complainant went to see his family doctor approximately two months after the accident complaining of low back pain. The doctor could offer no treatment and the complainant then saw another doctor approximately two months later. The second doctor he saw referred the complainant to an orthopaedic surgeon. Under the specialist's direction, the complainant was admitted to hospital. This admission was made on the basis of continuing back pain and pain in the right buttock. The complainant was discharged with a diagnosis of disc protrusion. It was the doctor's impression that the complainant had suffered a moderate injury to the lumbar spine. After being off work approximately six and one-half months, the complainant returned to his former employment. His back problem continued, however, and he was forced to undergo surgery about a year later. As a result of the surgery, he was off work for another six and one-half months. The surgery was performed by yet another orthopaedic specialist. Another two years elapsed and the complainant was again off work for another operation to his back. At this time, the worker was off work for six months. Since the date of the accident, the complainant had continuing problems with his back and had lost time from work on a regular basis. He was forced to take early retirement at the age of 64 because he could no longer handle heavy work as a result of his back problems. The complainant made a claim for Workmen's Compensation; however, it was rejected. The Appeal Board of The Workmen's Compensation Board accepted the fact that an accident or incident did occur during the course of the worker's employment; however, it did not accept that the ongoing disability was in any way related to the accident.

The complainant, after completing the appeal procedures at The Workmen's Compensation Board, registered a complaint with our Office. During our investigation, we undertook a complete and thorough review of all the medical documentation on file. We also contacted the orthopaedic surgeon who performed surgery on two separate occasions.

As a result of our investigation, it appeared that the pain from which the complainant was suffering in respect to his low back was related to an injury. This case was discussed at

case conference in June, 1976, and a report was submitted to The Workmen's Compensation Board outlining the information that we received from the orthopaedic specialist and the results of our investigation. At that time, the Ombudsman's opinion was that the medical evidence supported the fact that there was a direct relationship between the incident at work and the ongoing disability. Accordingly, the Ombudsman recommended that the complainant be paid compensation benefits for the periods he was unable to work in 1959, 1960, 1961, 1963, 1971 and 1973. He also recommended that the complainant be assessed and granted a Permanent Disability Award.

Following this report, the Ombudsman also notified the Board that he might make a possible recommendation that the Board make interest payments on retroactive benefits.

The Board responded to the Ombudsman's recommendation with a new decision dated August 17, 1976. It was the Board's position that the second doctor treating the complainant had no direct knowledge of the accident and therefore could not comment on the relationship between the accident and the ongoing disability. The Board also informed the Ombudsman that the evidence surrounding the actual accident was not clear. It was also the Board's position that the surgery was necessitated by a degenerative condition, not because of a trauma-related injury. The Board accordingly notified the Ombudsman that it was not in a position to implement his recommendation. Upon receipt of this letter, both issues were again considered by the Ombudsman. It was the Ombudsman's position that the Board did not have the authority to make retroactive interest payments and therefore this matter was not pursued further.

As a result of the Board's response to the above-mentioned recommendation, we sent a letter to the second orthopaedic surgeon confirming the information we obtained during our previous interview with him. This information clearly confirmed that a relationship probably did exist between the accident and the ongoing disability.

The Ombudsman therefore informed the Board, pursuant to Section 19(3) of The Ombudsman Act, that he might make a recommendation that could adversely affect the Board. In this letter, the Ombudsman informed the Board that it was his preliminary view that the Appeal Board wrongly concluded that the events surrounding the accident were questionable. The Ombudsman noted that the complainant's foreman stated under oath before the Appeal Board that he was aware that the accident had occurred. The Ombudsman also indicated that it was possible for him to conclude that the Appeal Board was wrong in failing to recognize the relationship between the complainant's fall and his ongoing disability and in rejecting the medical opinion expressed by the orthopaedic surgeon who operated on the complainant. It was the Ombudsman's opinion that it was unreasonable to suggest that a doctor with many years of experience in orthopaedics was unqualified to render an opinion as to the probable relationship between the accident and the

ongoing disability. It was also noted that doctors who render such opinions rarely have first-hand knowledge of the circumstances surrounding their patients' accidents and that their opinions have been considered valid by the Board in the past.

The Ombudsman also tentatively concluded that the Board put unreasonable weight on the fact that the complainant was not seen by an orthopaedic surgeon for some five and one-half months after the accident and failed to recognize the fact that the worker sought continuous medical treatment beginning one week after the incident. The Ombudsman also tentatively concluded that the treatment given to the complainant by the orthopaedic surgeon was to correct a disc injury occasioned by trauma, not simply to correct a congenital instability, and that it was his view that the Appeal Board was wrong in deciding that this complainant's treatment was not related to an accident caused by work. This opinion was supported by the statement on file from the original orthopaedic specialist who diagnosed a disc protrusion and who noted that the complainant suffered a moderately severe injury. The doctor who performed the surgery was also of the opinion that the disability which necessitated surgery could have been caused by the accident.

The Ombudsman therefore informed the Board that he might make a possible recommendation that the Appeal Board vary its decision and pay compensation benefits to the complainant. The Ombudsman also listed as another possible recommendation that the Appeal Board order that the complainant be reassessed for a Permanent Disability Award.

A letter pursuant to Section 19(3) was not sent to the pre-accident employer as he was out of business and could not be adversely affected.

As a result of his letter sent under Section 19(3), the Ombudsman was notified by the Board that it had no further representations to make or add. Accordingly, a report pursuant to Section 22(3) of The Ombudsman Act was forwarded to The Workmen's Compensation Board outlining the conclusions and recommendations made in the 19(3) report. The Workmen's Compensation Board notified our Office that they would not implement the recommendations made by the Ombudsman. A copy of our report was sent to the Premier pursuant to sections 22(4) and 22(5) of The Ombudsman Act.

Accordingly, The Workmen's Compensation Board, the Ministry of Labour and the complainant were notified that this case would be reported in the Ombudsman's Third Report to the Legislature.

(76)

SUMMARY OF COMPLAINT

The complaint first came to our attention when we were contacted by a Federal Member of Parliament regarding a problem one of his constituents was having with The Workmen's Compensation Board.

The complainant had availed himself of all of his rights of appeal at the W.C.B. and his complaint was accordingly within our jurisdiction.

The Chairman of the Board was notified of our intention to investigate the complaint pursuant to Section 19(1) of The Ombudsman Act. A photocopy of the Board's file was subsequently received and reviewed.

The complainant had been employed on an assembly line, manufacturing cars. His job was to install glass in the car doors. On July 31, 1974, the complainant arrived at work and at about 8:30 a.m., while lifting three or four panes of glass, he felt a sharp pain in his lower back. He saw the company doctor who diagnosed the pain as a kidney infection and gave the complainant a prescription and sent him home.

The next day, the complainant visited his family doctor who diagnosed a lumbo-sacral strain superimposed on a kidney infection.

A claim for benefits was originally processed by the Board, but upon further investigation, the claim was denied. The Board requested and received from the complainant a repayment of the \$1,100 in benefits which had been paid to the complainant by the Board.

From the medical reports submitted to the Board and from investigation conducted by the Office of the Ombudsman, it was clear that on August 1, 1974, one day after the alleged accident, the complainant had a kidney infection and symptoms of a low back strain. The former condition cleared up within a few months but the low back condition required ongoing physiotherapy. The complainant still has problems with his back today.

Pursuant to Section 19(3) of The Ombudsman Act, letters were sent to the company and The Workmen's Compensation Board. The letter to the company, sent to the attention of the company doctor and the labour relations officer, informed them that, although a final opinion had not been reached, there did appear to be sufficient evidence that the complainant injured his lower back on July 31, 1974, during the course of his employment with the company. The company and the doctor were invited to make representations with respect to this matter. By letter dated July 1, 1977, the labour relations officer responded on behalf of the company and indicated that the company had no further representations to make other than those which had already been submitted to The Workmen's Compensation Board and to our Investigator during an interview in February, 1977.

The Chairman of The Workmen's Compensation Board responded by stating in part that "the Appeal Board did not question that (the complainant) subsequently had back troubles, but it could not accept the argument that there was an incident while in the course of his employment, arising out of his employment."

In his final report on this matter dated July 22, 1977, the Ombudsman stated:

"In conclusion, there appear to be two possible explanations for [the complainant's] coinciding disabilities. The first possibility is that [the complainant] sustained a lumbo-sacral strain, superimposed on a pre-existing kidney infection while in the course of his employment on July 31, 1974. The second possibility is that [the complainant] sustained a lumbo-sacral strain, superimposed on a kidney infection some time between when he was sent home by [the company doctor] and when he saw his family doctor in August 1, 1974."

"It is my view based on our investigation of this matter and in consideration of the principle of the extension of reasonable doubt that the first explanation outlined above should be accepted by The Workmen's Compensation Board."

"It is my view that the decision of the Appeal Board to deny this claim was unreasonable, particularly given the evidence which substantiates an incident at work as opposed to the complete lack of evidence to substantiate supposition that [the complainant] sustained a low back strain between July 31, 1974 and August 1, 1974."

Accordingly, pursuant to the provisions of Section 22 of The Ombudsman Act, the Ombudsman recommended that The Workmen's Compensation Board cancel its decision in this case and make benefits payable to the complainant for the lost time from work resulting from the accident which he appeared to have sustained while in the course of his employment. A copy of this report was sent to the Minister of Labour.

By letter dated August 26, 1977, the Chairman of The Workmen's Compensation Board informed the Ombudsman that:

"The Board's decision of November 30, 1975 was the only decision that it could have reached. In the opinion of the panel, there is no indication that the decision is in error or that a change is warranted."

A copy of our report was sent to the Premier pursuant to sections 22(4) and 22(5).

(77) SUMMARY OF COMPLAINT

While at work in late 1971, this woman fell, hitting the left side of her skull and face. She also injured her back. The worker went immediately to her family physician who diagnosed a contusion to her skull and low back strain. The doctor estimated that the complainant would be unable to work for approximately three weeks.

The woman did not recover as expected and continued to seek medical attention for severe headaches, dizziness, loss of hearing in the left ear and low back pain.

The W.C.B. was notified of the accident and awarded the complainant Temporary Total benefits for approximately four months, at which time the Board determined that there was no medical evidence to support further payments. The complainant appealed this decision. In October, 1975, the Appeal Board confirmed the decision to deny further benefits on the grounds that the medical evidence did not indicate a relationship between the complainant's ongoing disability and her industrial accident.

After exhausting the appeal procedure at the W.C.B., the complainant was referred to our Office by the agency which represented her at her appeals and by her M.P.P. It was the worker's contention that she was totally disabled as a result of her fall at work, and that her benefits from the W.C.B. should have been continued.

On April 1, 1976, the complainant was personally interviewed in Italian by members of our staff. Following this interview, the Board was notified pursuant to Section 19(1) of The Ombudsman Act of our intention to investigate her complaint.

During our investigation, the complete file from the W.C.B. was reviewed. The information presented by the complainant was considered and the family doctor was contacted.

Our investigation revealed that the worker had a good work history prior to the accident and that she had been employed by the same company for 6½ years, performing similar types of jobs. According to statements taken by W.C.B. investigators, the majority of her co-workers were of the opinion that the complainant was a hard-working individual with no obvious signs of any psychiatric disorder prior to the accident.

Following the accident, the worker continued to complain of headaches, dizziness and loss of hearing. Her family physician was unable to ascertain any explanation for the ongoing disability and diagnosed post traumatic neurosis approximately three weeks after the accident. Her doctor referred the complainant to a number of specialists. The otologist and orthopaedic specialist who examined the complainant were unable to find any organic basis for the ongoing disability.

The complainant was then referred to a psychiatrist who spoke with her in her native language. It was his diagnosis

that the complainant was suffering from hysterical neurosis which was triggered by the accident, although he noted that many other factors played a role in the continuation of her disability.

The symptoms persisted and the woman sought continuing medical treatment from her family physician. To date, except for a very short time, the complainant has not returned to work. Approximately 3½ years after the accident, another psychiatrist examined the complainant and stated that the disability diagnosed as hysterical neurosis was precipitated by the accident but maintained by family stresses.

In summarizing the reports of these psychiatrists, it appeared that the worker was suffering from a disability which was clearly attributable in great part to factors in her life such as family stresses and her dependent personality; however, it was also clear that the accident had precipitated or triggered the surfacing of the disability.

In reviewing the file, it appeared that the Board made its decision to terminate benefits on the basis of the report of one of its doctors who diagnosed hysteria-malingering. When the Ombudsman considered this opinion, he noted that the doctor who had made this diagnosis had never personally examined the complainant.

The results of our investigation were discussed at a case conference and it was the opinion of the Ombudsman that a medical relationship did exist between the accident and the ongoing disability which was documented in the number of medical reports on file. Accordingly, the Ombudsman reported his opinion to the Board and indicated that the Appeal Board was wrong in concluding that a relationship did not exist between the disability and the accident. The Ombudsman also recommended that the Board award the complainant retroactive benefits at the rate of 25% to the date benefits were last received and continuing for the duration of her disability.

The Board responded to his recommendation in early September after referring the file to its own psychiatric consultant. In its response, the Appeal Board noted that according to its consultant, by granting the complainant additional financial support, rehabilitative prospects would not be enhanced. Accordingly, the Board declined to implement the Ombudsman's recommendation. Upon receiving this response, the Ombudsman undertook further investigation. The case was again discussed with the Ombudsman and members of his legal staff and it was determined that it would be appropriate to notify the Board, pursuant to Section 19(3) of The Ombudsman Act, that the Ombudsman could make a recommendation that might adversely affect the Board. In his letter, pursuant to Section 19(3), the Ombudsman outlined his possible conclusion that the Board had wrongly concluded that medical reports to date did not indicate a relationship between the complainant's ongoing psychiatric disability and the accident in 1971. The Ombudsman also concluded that the Board did not attach reasonable weight to the fact that the complainant had a

good work record prior to the accident. In his letter, the Ombudsman outlined his possible recommendation that the Appeal Board vary its decision and order the complainant to receive a continuing Permanent Disability Award of 25% from April 22, 1972.

The accident employer informed our Office after receiving a letter pursuant to Section 19(3) of The Ombudsman Act that it did not wish to make formal representations. The Board responded by stating that the Appeal Board was satisfied with the decision and did not intend to vary or amend the previous decision.

The Ombudsman considered the argument raised by the Board that financial support could be detrimental to the complainant. It was the Ombudsman's opinion that the Board should grant entitlement when it is shown that a relationship exists between a disability and a work accident.

During his consideration of this complaint, the Ombudsman took into account the fact that other non work-related factors were contributing to the complainant's disability and he notified the Board that he was not of the opinion that it should assume full responsibility for the complainant's ongoing disability. However, the Ombudsman was also of the opinion that a medical relationship between the ongoing disability and the accident did exist and was well documented in the medical reports and therefore he concluded that the Appeal Board was wrong in its decision to deny her further benefits.

The Ombudsman then forwarded a report to the Board pursuant to Section 22(3) of The Ombudsman Act outlining his opinion that the Appeal Board was not correct to deny the existence of a relationship between the industrial accident and the ongoing disability. He accordingly recommended that the decision of the Appeal Board to deny the complainant benefits be cancelled and that she be paid 25% benefits retroactive to April 22, 1972 and continuing for the duration of her disability. A copy of this final report was also sent to the Minister of Labour.

After receiving this final report, the Board informed the Ombudsman that it still did not plan to implement his recommendation. The complainant was forwarded a copy of our final report and informed that her case would be presented to the Legislature in our Third Report. A copy of our report was sent to the Premier pursuant to sections 22(4) and 22(5).

(78) SUMMARY OF COMPLAINT

In late May, 1977, this Northern Ontario, French-speaking complainant requested our assistance in obtaining a decision from The Workmen's Compensation Board regarding his request for a full commutation of his permanent disability pension. He wanted to invest this money in his lumber business. In a telephone interview, he stated that he had already applied for this commutation. The complainant stated that he was promised his request would be granted and was waiting impatiently for a cheque. By the time he came to our Office, he claimed that this matter had become very urgent due to the six-week delay in meeting his

request. His impatience arose from the fact that he feared his lumber business equipment would be repossessed by a finance company because he could not meet his payments without the commutation.

On the same day the complaint was received, our Investigator contacted the Rehabilitation Officer at the Board who was processing the complainant's request. This official informed us that all requests for commutations of pensions take at least six weeks to process due to the need to investigate the purpose for which the request has been made. We were also informed that no one is ever promised a commutation as the granting of such a request is always decided on an individual case basis after an evaluation of whether the proposed use of the lump sum payment appears to be a rehabilitative measure as is required by Board policy. The Rehabilitation Officer informed our Investigator that the investigation into the complainant's request was taking longer than usual because a great deal of conflicting information regarding the worker's past and present business ventures and financial status had to be verified.

Our Investigator telephoned the complainant the same day and informed him that according to the W.C.B., his request was being processed as quickly as possible. Four days later, the complainant contacted our Investigator and communicated his anxiety and fear that he would shortly lose his equipment and therefore his business to the finance company.

Our Investigator then immediately contacted the complainant's Rehabilitation Officer and requested that he contact the complainant's finance company in order to ask them to delay taking any action regarding the repossession of the worker's equipment until a decision had been made regarding the commutation. The Rehabilitation Officer disclosed that this had already been arranged and the complainant was aware of the arrangement. However, he indicated that he would confirm it once more. The Officer also disclosed in this discussion that the complainant had actually not applied for a commutation until close to the end of April even though he knew four months earlier that he could not meet his loan payments. In addition, the complainant had not provided the Rehabilitation Officer with all the necessary information with which to proceed since he had not filled out and returned a number of forms. It was only when the complainant met personally in Toronto with his Rehabilitation Officer that the proper forms were filled out. Thus, it became apparent that the Board was making every possible effort to deal with the complainant's application as expeditiously as possible.

The next day, one of our bilingual Investigators spoke with the complainant in French and outlined the information that we had obtained, reassuring him that no action would be taken by the finance company until the W.C.B. made a decision.

In early June, 1977, approximately five weeks after he had actually applied to the Board for a commutation of his pension, the complainant's request was granted and a cheque was mailed to him.

(79)

SUMMARY OF COMPLAINT

In October, 1975, this complainant injured his shoulder while working as a woodcutter in Northern Ontario. He began receiving 100% Temporary Total benefits immediately and this continued for 1½ years until he was able to return to modified employment.

However, in April, 1977, just before he returned to work, the complainant wrote in French to the Office of the Ombudsman indicating that he felt his compensation rate was improperly calculated and was too low. He explained that while working as a cutter, he had been paid a basic salary and received an extra bonus each month which varied according to his output. He stated in his letter that he believed his company had omitted reporting this extra monthly bonus which comprised part of his total earnings and therefore his compensation rate had been unrealistically low.

Upon receiving the complainant's letter, our Investigator called the Counselling Branch of the W.C.B. and informed it of the details of this worker's problem. Ten days later, a Counselling Specialist informed our Office that as a result of our telephone call, the Claims Adjudication Branch was contacting the complainant's accident employer in order to confirm the information concerning his earnings which had been brought to light by the worker. There was no reference on the W.C.B. file to additional wages paid to the complainant on a monthly, rather than weekly, basis.

Two weeks later, our Office received a copy of a letter addressed to the complainant from the W.C.B. which stated that his compensation rate had been reviewed. In response to the Board's inquiry, the employer confirmed that the worker had been paid a bonus in the month before his accident which had not been submitted as part of his earnings during that period. The letter indicated that the complainant's compensation rate had been increased to the maximum, retroactive to the date he began receiving Temporary Total benefits and that a cheque for over \$5,000 had been mailed to him.

However, our Investigator noted that according to the letter from the W.C.B., the complainant's compensation rate had been raised by over \$280 per month when his unreported bonus had been just a little over \$200 per month. Upon recognizing this problem, our Investigator contacted the W.C.B. once again and asked it to review its calculations in this claim since an error of some magnitude seemed to have been made. This notification to the Board seemed quite important to us because the worker would have no way of knowing that he might have received too much money due to the fact that the Board did not fully explain its calculations. The Board had simply informed him that his compensation rate had been adjusted to the maximum and had sent him a cheque.

The same day, our Investigator contacted the complainant by telephone and explained in French that an error had undoubtedly been made and that he would probably be notified of an overpayment by the Board.

Subsequently, our Office was notified by the complainant's claims adjudicator that a review had disclosed an overpayment to the worker of approximately \$3,400. The claims adjudicator stated she would be sending a letter to the worker requesting that he refund the overpayment. Our Investigator requested that the worker be given a detailed explanation of the Board's calculations with respect to the amount he was entitled to and the amount he had been overpaid and that a copy of this be sent to our Office. This request was met in a letter which was sent to the complainant two days later.

(80) SUMMARY OF COMPLAINT

In November, 1975, while driving a truck in the course of his employment, the complainant was involved in a head-on collision. He sustained a severe injury to his left leg above the ankle and, as a result, began receiving 100% Temporary Total benefits.

However, by March, 1977, the complainant became concerned because he had not received any payments for almost a month and his Workmen's Compensation Board benefits were his major source of income. At this point, the worker became aware through the newspaper that the Ombudsman was holding private hearings that week in his home town in Southern Ontario. He attended the hearings in order to request our assistance in sorting out the problem with his W.C.B. cheques. In a private interview with one of our Investigators, the complainant indicated that a week previously he had received a letter from the Board stating that he would not receive any more benefits until the Board received further medical reports regarding his condition. The complainant telephoned his doctor's office but was informed that they had sent their report to the Board almost three weeks earlier.

Our Investigator contacted a Senior Counselling Specialist at the Board and informed him of the details of the worker's complaint. A week later we were informed that a cheque had been mailed to the complainant paying him fully to that date. The Counselling Specialist further explained to our Investigator that upon receipt of our inquiry, the worker's file was taken to the Claims Adjudication Branch and a Claims Officer telephoned the complainant's doctor. During the discussion, it was discovered that the physician had attached an incorrect claim number to his report. Subsequently, the report was found attached to the wrong file and was rerouted to the complainant's file. The report was then examined by the appropriate Workmen's Compensation Board Medical Officer and further payment on the claim was approved and sent to him. Two weeks after the complaint was received, the worker confirmed in a telephone conversation with our Investigator that he had received his cheque.

(81)

SUMMARY OF COMPLAINT

In late 1972, on a Saturday, while cleaning floors at work, this complainant began to feel pain in her shoulders and arms; however, she finished the day's work. She reported to work on Monday, complaining that her left arm was swollen and her shoulder was very sore as a result of her day's work the previous Saturday. She left work to visit her doctor who diagnosed strained shoulders. She was off work and received Temporary Total 100% benefits for approximately 13 weeks and Temporary Partial 15% benefits for a further 12 weeks.

In June, 1973, the complainant returned to work with another employer as a general kitchen helper. However, she claimed that in November and December, 1973, her shoulder began to swell and caused her pain again. This condition became worse until she left work in early February, 1974. She did not suffer from a second injury or incident at work.

Since the complainant's family physician noted that she was experiencing pain similar to that which she began to feel when she left work the first time, the W.C.B. granted entitlement to further benefits. Thus, Temporary Total 100% benefits were paid to the complainant for an aggravation of her compensable disability for a further 5½ months.

The employer appealed this decision to grant further entitlement on the basis that the second lay off had nothing to do with her first lay off. After a thorough review of all the medical evidence submitted to the Board during this 5½ month period and the medical review of the complainant in person, the Medical and Claims Adjudication Branches decided that the complainant had been granted entitlement in error. They felt that under closer scrutiny, the medical evidence did not support the conclusion that the complainant was disabled. They noted that on numerous occasions throughout this period, her doctors wrote that she could return to work immediately. Therefore, her benefits were terminated and it was calculated that she had received an overpayment of over \$1,400. The complainant attempted to return to work immediately but after one week she again left.

The complainant appealed this decision to the Review Committee which concluded, in December, 1974, that she was not entitled to benefits beyond June, 1973. However, the Committee "agreed to take no further action regarding any request for a refund of the \$1,480.07 overpayment." Subsequently, the worker appealed her claim for further Temporary Total benefits following her lay off beginning February, 1974, and she also appealed for an increase in her entitlement between March and June, 1973 to 50% rather than 15% Temporary Partial.

The Appeal Board, in their June, 1975 decision, concluded that medical reports did not indicate any continuing disability, subsequent to her February, 1974 lay off, which could be attributed to her compensable lay off in 1972-73. Therefore, no further benefits for this period of time were awarded and

the overpayment was confirmed. However, the Board granted the appeal in part by awarding her entitlement to Temporary Partial 50% benefits (rather than 15%) between March and June, 1973.

Subsequently, in October, 1975, the Adjudication Branch wrote to the complainant stating that the W.C. B. had deducted the difference between her Temporary Partial 15% benefits received and Temporary Partial 50% benefits granted by the Appeal Board from her overpayment. They also requested that she begin refunding the remaining overpayment of approximately \$1,200.

At this point, the complainant sought the assistance of Injured Workers Consultants in dealing with her complaints against the Board. However, after ascertaining that she had completed the appeal process, the organization referred her to our Office.

On April 5, 1976, the Board was notified of our intention to investigate this complaint pursuant to Section 19(1) of The Ombudsman Act. The Workmen's Compensation Board sent us a copy of the complainant's complete file.

In February, 1977, letters were sent to two of the complainant's family physicians, one of whom had treated her before her original lay off in December, 1972, while the other treated her for approximately two years after, including the period of her 1974 lay off. The latter family physician submitted two reports to our Office, outlining the treatment and diagnosis of the complainant's symptoms, based on the medical reports available through the clinic where both doctors practised. The family physician who treated the complainant before her original lay off was out of the country for an extended period of time, hence the second physician examined his notes and confirmed that in June, 1972, six months before her lay off, the worker complained of pain in her right shoulder and arm which was diagnosed as arthritis. The second family physician reported that he felt there were degenerative changes in the woman's left shoulder before her injury. He also wrote that in his opinion, during most of the two years he treated her, he felt that she was not disabled from working, although her complaints were constant.

Our Investigator then contacted the Registrar of Appeals at the Board by telephone and discussed with him the issues dealt with in the Appeal Board's decision. It was clarified that the issue dealt with was whether the complainant was entitled to Temporary Partial 50% benefits after March 13, 1973, and whether she was entitled to Total Disability benefits after February 14, 1974. Neither the claimant nor her representative had specifically presented the Appeal Board with a further claim for a Permanent Disability Award and this issue was not specifically dealt with. The Registrar of Appeals stated that in reviewing all the medical evidence pertaining to the claimant's entitlement, the Appeal Board had no doubt given consideration to the issue of a Permanent Residual Disability.

However, the Board's ruling that "the medical reports do not indicate any continuing disability subsequent to February 14, 1974, which can be attributed to the compensable accident of December 2, 1972" indicated that a Permanent Disability Award was not warranted.

We contacted the Secretary of the Board regarding the Board's decision to recover part of the complainant's overpayment by deducting the further benefits which were awarded to the claimant by the Appeal Board. This amounted to \$288.55. We asked if the Board had made an administrative error in deducting this sum from the overpayment since the Review Committee wrote on December 9, 1974, that they had "agreed to take no further action regarding any request for the refund of the . . . overpayment." The Secretary referred our Office to the Director of the Claims Adjudication Branch who explained that the Review Committee had stated they would not request that the claimant refund the overpayment. However, that did not mean that if additional benefits were subsequently awarded, they would not be applied towards the overpayment.

The balance of our investigation focused on the medical evidence available on file regarding the complainant's shoulder and arm disability. All the medical reports from the numerous orthopaedic specialists and family physicians who treated the complainant subsequent to her 1974 lay offs indicated that although she complained of continuous pain in her shoulder, these symptoms were a result of chronic minor degenerative changes compatible with her age and were not related to her 1972 injury.

In July, 1977, the Ombudsman wrote to the employer and the Chairman of The Workmen's Compensation Board, indicating that he was not prepared to make a recommendation under Section 22(1) of The Ombudsman Act, with respect to the complainant's contention that she was entitled to continuing Total Disability benefits and a Permanent Disability Award subsequent to her February 14, 1974 lay off. However, the Ombudsman indicated that pursuant to the provisions of Section 19(3) of The Ombudsman Act, he wished to give the employer and the Board an opportunity to make representations to him concerning the following possible recommendation which might adversely affect them:

"The Workmen's Compensation Board should abandon any future plans to recover the overpayment of \$1,486.07 in this case, and order that (the complainant) be paid in the amount of \$288.55 which was withheld by reason of The Workmen's Compensation Board's unjust position regarding the overpayment."

The reasons given for this possible recommendation were that, firstly, the worker was advised by the Review Committee that it would take no further action regarding any request for a refund of the overpayment. In this case, the wording of the statement appeared to be misleading since it did not in any way notify the worker that any future benefits might be deducted

from the overpayment. The statement also appeared to imply to the layman that the Board had agreed not to try to recover the overpayment at all. In addition, the additional award granted to the worker as a result of the Appeal Board's decision was related to her 1973 period of lay off. It appeared to the Ombudsman that the Appeal Board was unreasonable in deducting from an award relating to 1973, an overpayment arising from a different period of lay off in 1974.

The employer made his representations by telephone on July 5 and July 22, 1977. The W.C.B. responded in a letter dated July 19, 1977, which included an addendum to the September, 1975 Appeal Board decision dated July 11, 1977.

As a result of the Ombudsman's possible recommendation, the Appeal Board concluded that the complainant should be paid the balance of the 50% awarded for the period March 13 to June 13, 1973. The Appeal Board addendum also was set out as constituting effective notice to the complainant that any further payments to which she became entitled under The Workmen's Compensation Act would be applied against her existing overpayment. On August 25, 1977, reporting letters were sent to the complainant, the Chairman of The Workmen's Compensation Board and her employer informing them of the completion of the Ombudsman's investigation and his opinion that the Appeal Board decision in this case could not be found to be unreasonable and that a recommendation under Section 22(3) of The Ombudsman Act could not be made.

(82) SUMMARY OF COMPLAINT

This complaint originated through a personal interview conducted by an Ombudsman staff member fluent in Greek. The information obtained from the complainant indicated that he was questioning both the termination of all his benefits in the fall of 1976 and the reduction in the percentage of benefits awarded in the period just prior to the termination.

Our Investigator's contact with The Workmen's Compensation Board demonstrated that various non-compensable problems were considered to be contributing factors in the complainant's disability. At the time the W.C.B. Pensions Branch assessed the complainant, no residual compensable disability was noted and, as such, no Permanent Disability Award was made and ongoing benefits ceased. The complainant had a right of appeal concerning both these issues.

The complainant was advised in a telephone conversation in Greek of the above information and of his right to appeal the W.C.B. decisions. The complainant was also supplied with the name of an organization which might assist him with his appeal.

(83) SUMMARY OF COMPLAINT

This complaint was brought to our attention during our private hearings in Northern Ontario. The complainant indicated that she had forwarded information to The Workmen's Compensation Board in December, 1976, with respect to an additional period of 17 days lost time related to her original compensable injury of September, 1976. Although the complainant stated that both she and her employer had contacted the Board subsequent to December, 1976 concerning the additional lost time from work, she had not been advised of her entitlement. The complainant at that time had returned to work.

Our Investigator's contact with the Board revealed that the necessary information concerning this period of lay off was on the complainant's file but had not been considered. Shortly thereafter, the file was brought to the attention of the Board's Claims Branch.

The complainant was informed of the action being taken by the Board and that our Office would again be in touch with her to determine if she had been advised concerning further entitlement.

One month later, during a further telephone conversation, the complainant informed our Office that she had received a cheque from the Board for the period in question.

(84) SUMMARY OF COMPLAINT

In October, 1969, this complainant fell to the floor from a ladder onto his back. His injuries were diagnosed as a compression fracture of a lower vertebra and minor fracture of the left ankle. The ankle fracture appeared to have healed without incident; however, the complainant's back continued to give him problems.

The complainant was under the care of an orthopaedic surgeon immediately after his accident and was also examined by a neurologist, a neuro-surgeon, another orthopaedic surgeon and staff physicians at The Workmen's Compensation Board's Hospital and Rehabilitation Centre between 1970 and 1972. Although the complainant described symptoms of disabling low back pain, it was the unanimous opinion of the physicians involved in the treatment of the complainant that his fracture had healed and that he was suffering from an hysterical reaction to the injury he had suffered.

In November, 1970, the complainant's Permanent Residual back disability was assessed by The Workmen's Compensation Board's Pensions Department and he was awarded a 15% pension payable for life, the 15% being in recognition of the permanent physical disability resulting from the accident even though the physicians noted that there was no doubt that they were dealing with a mixture of psychogenic and organic disability.

The complainant felt that his pension was inadequate as he considered himself totally disabled and unable to return to any form of gainful employment. Before formally appealing the amount of his pension, however, the complainant sought the opinion of a well-known physician who referred him to yet another orthopaedic surgeon who reported to The Workmen's Compensation Board that it was his opinion that the complainant was from 25 to 30% disabled. The complainant then formally appealed his pension on the basis of this more recent report. The complainant was reassessed in April, 1972, by a more senior member of the Pensions Department who recommended an increase in the complainant's pension from 15% to 25%, the additional 10% awarded in recognition of the minimal relationship between the accident and the complainant's gross psychogenic magnification of pain syndrome which was thought to be precipitated by his industrial accident. It was left to the discretion of the Pensions Adjudication Department, however, to determine from what date it should be made payable. The Pensions Adjudicator felt that the award should be paid retroactive to October, 1971 which was three months prior to the Board's receipt of the complainant's appeal as, the Pensions Adjudicator reasoned, the previous assessment had not indicated a greater degree of disability.

The complainant appealed his pension to the Appeal Board in January, 1973; however, the Appeal Board could not conclude that the complainant's residual disability which could be related to his industrial accident was greater than that recognized by his Permanent Partial Disability pension previously established on a 25% basis.

The complainant then requested that the Ombudsman investigate his claim against the Board. With the assistance of a Polish-speaking member of the Ombudsman's staff, the complainant informed an interviewer that it was his contention that he had been rendered totally disabled as a result of his industrial accident and that, therefore, his 25% pension was inadequate. It was also his contention that The Workmen's Compensation Board had acted unreasonably in awarding him the additional 10% pension effective October, 1971, rather than November, 1970, the date his original pension had taken effect. The complainant viewed this later date as being significant only in that it was the approximate date he consulted the physician.

As the complainant had exercised his full appeal rights at the Board, the complaint was within the Ombudsman's jurisdiction to investigate. Accordingly, pursuant to Section 19(1) of The Ombudsman Act, the Board was informed of the Ombudsman's intention to investigate the worker's complaints. The Board responded by forwarding to the Ombudsman's Office a copy of the complainant's Board file.

Our investigation of this complaint involved a thorough examination of the complainant's W.C.B. file and a personal interview with the complainant in the Polish language.

Following our preliminary investigation, our Investigator presented the facts of this case to the Ombudsman who concluded that, while it appeared that The Workmen's Compensation Board had not acted unreasonably nor had it in any way acted in a manner that would come within the provisions of Section 22(1) of The Ombudsman Act with respect to the amount of the complainant's pension, it appeared that the Board's decision to award the 10% increase in the complainant's pension effective October, 1971, rather than November, 1970, was possibly unreasonable.

Accordingly, pursuant to Section 19(3) of The Ombudsman Act, the complainant's employer and the Chairman of The Workmen's Compensation Board were informed that, based on our investigation at that point, there existed sufficient grounds for the making of a report or recommendation that could adversely affect The Workmen's Compensation Board. The two parties were invited to make representations respecting the possible adverse report or recommendation and it was suggested that, if they chose to make such representation, they should address themselves to the Ombudsman's possible conclusion and possible recommendations as follows:

"Possible Conclusion:

It would appear open to me to conclude that the basis of making the increase retroactive to October 26, 1971, namely, 'the award should be increased to 25% which could date back three months prior to receiving the last appeal, as the previous exams did not indicate a greater degree of disability' was arbitrary on the part of The Workmen's Compensation Board and that it would be more consistent and in keeping with the medical evidence contained in the file to have made the increase effective October 7, 1969 less the period when (the complainant) was in receipt of Temporary Total or Temporary Partial Disability Benefits."

The Ombudsman's letter continued:

"Possible Recommendations:

- 1) [The complainant's] contention to this Office, that his 25% pension does not appear to have adequately reflected the degree of residual disability resulting from his accident, cannot be substantiated.
- 2) That, however, it would appear that when the pension was increased from 15% to 25%, the additional award should have been made retroactive to the date that the original award became effective."

The complainant's employer chose not to make representation with respect to the Ombudsman's possible conclusion and possible recommendations; however, The Workmen's Compensation Board reconsidered the complainant's claim and on September 15, 1977, varied its previous decision and rendered a new decision as follows:

"On receipt of this recommendation, the Appeal Board completely reviewed this matter and in light of the current information is prepared to accept the recommendation of the Ombudsman. The Appeal Board, therefore, rules that the decision of the Appeal Tribunal dated April 17, 1972 be rescinded and the 25% pension now being received by [the complainant] be confirmed and that it be paid retroactively to November 26, 1970, less any payments made to date."

The Ombudsman received notification of this decision and the Polish-speaking member of our staff immediately contacted the complainant, advising him of this recent decision. As well, the complainant was informed by letter that, although the Ombudsman could not substantiate his contention that his 25% pension was not commensurate with his degree of residual disability resulting from his industrial accident, the Ombudsman has made the tentative recommendation to The Workmen's Compensation Board that the date his pension increase took effect appeared unreasonable and that, as a result, the increased pension would be paid retroactively to November 26, 1970.

(85) SUMMARY OF COMPLAINT

This complainant sustained an injury to his back during the course of his employment in January, 1977. As a result of this injury, the complainant was rendered totally disabled for approximately two months, after which he returned to work. He was paid full Workmen's Compensation Board benefits for this period.

Following his return to work, the complainant suffered a recurrence of back disability resulting in his absence from work again some three weeks later. One month later, he had not yet received any benefits although, as he informed one of our Interviewers, he had been issued a new claim number by the Board. Our Investigator contacted the Senior Counselling Division of The Workmen's Compensation Board and informed them that, because the complainant was claiming Workmen's Compensation Board benefits for a recurrence of his January, 1977 injury rather than for a new injury, his claim should be adjudicated under his prior claim and that the institution of a new claim, which involved the obtaining of information that was already available in the prior claim, was unnecessary. Our Investigator also informed the senior counsellor that the new claim ought to be amalgamated into the prior claim.

The senior counsellor obtained both the complainant's claims and found that by amalgamating the two claims, there was sufficient information to adjudicate the claim.

Accordingly, The Workmen's Compensation Board accepted the worker's claim and the complainant was allowed benefits from the date of his second absence from work.

(86) SUMMARY OF COMPLAINT

This complainant indicated that he was a student and only self-employed during the summer months. He was of the opinion that when he completed the "Employer's Statement of Payroll", for The Workmen's Compensation Board purposes, he was only making inquiries as to the cost of such coverage and was not making a definite application. When he received the Board's "Notice of Assessment", it was the complainant's opinion that the amount due was excessive for the nature of his summer employment. He therefore did not pay the amount requested and assumed that he would have no coverage. However, he continued to receive statements from the Board requesting payment of the assessment.

Our Investigator's contact with the Board's Revenue Assessment Branch established that the "Employer's Statement of Payroll", requesting personal coverage and duly signed by the complainant, was considered as an application for such coverage. The complainant's position was discussed with a Board official and although the completed Employer's Statement and subsequent assessment were in keeping with Board procedure, the Board agreed to cancel the complainant's coverage and levy no charge for the administration costs involved.

The Board's cancellation of personal coverage was confirmed with the complainant and in our reporting letter, we informed the complainant that short-term coverage was available and would be more applicable to the nature of the complainant's summer employment.

(87) SUMMARY OF COMPLAINT

In May, 1957, the complainant injured his lower back while moving a 600-pound object with the assistance of his co-workers. In March, 1958, the ruptured disc was removed. Subsequently, a lesion developed in that area and, in June of 1959, surgery was performed to partly fuse the spine. The graft proved to be unstable, necessitating a third back operation in July, 1960.

Since his accident, and despite the three operations, the complainant's symptoms, including severe low back pain, a right "drop foot", urinary difficulties, weight loss, irritability, depression and sexual impotence, had continued. As well, since the time of his accident, the complainant was under the care of his family physician, an orthopaedic surgeon, a chiropractor and

a neuro-psychiatrist. He was also examined by a number of Workmen's Compensation Board doctors. All of the physicians involved in the case agreed that the complainant was totally disabled as a result of his industrial accident and the treatments he received as a result of the accident.

The complainant returned to his pre-accident employment both before and after each of the operations, but was unable to continue working due to his back pain. He then took courses to learn a trade and attempted to utilize the training; however, he gave up these endeavours as his back pain did not allow him to continue. The complainant had not been engaged in gainful employment since November, 1962.

The complainant received Temporary Total or Temporary Partial benefits for each period of lay off, from the date of his accident to March, 1962, when he was awarded a 30% pension for life. Between March, 1962 and September, 1967, the complainant's pension was increased 3 times so that he was eventually receiving a 75% pension yielding a monthly award of \$194.50. Due to the amendments to The Workmen's Compensation Act in July, 1974 and July, 1975, the complainant's pension was raised to \$400.00. Of this 75% pension, 50% was meant to compensate his physical disability and 25% was meant to compensate his psychological disability resulting from his industrial accident.

The complainant appealed the amount of his pension to the Appeal Board claiming a Permanent Disability Award of 100% as he felt that the 75% pension did not adequately compensate him for his residual disabilities, as he was totally disabled. The Appeal Board, however, denied his appeal concluding that the evidence presented did not support the contention that he was 100% disabled.

The complainant then brought his complaint to the Office of the Ombudsman. As the complainant had exhausted all of the appeal rights open to him at The Workmen's Compensation Board, it was determined that his complaint was within the Ombudsman's jurisdiction. Accordingly, pursuant to Section 19(1) of The Ombudsman Act, The Workmen's Compensation Board was informed of the Ombudsman's intention to investigate the worker's complaint against the Board. The Board responded by forwarding to the Ombudsman a complete copy of the complainant's Board file.

Following a thorough review of the complainant's file and a number of personal interviews with the complainant, the facts of this case were presented to the Ombudsman. The Ombudsman concluded that it appeared that The Workmen's Compensation Board had acted unreasonably and that the Appeal Board's decision of February 8, 1975, should be altered or varied. Accordingly, pursuant to Section 19(3) of The Ombudsman Act, the Chairman of The Workmen's Compensation Board and the complainant's former employer were informed by letter that, based on the Ombudsman's investigation thus far, it appeared that there were sufficient grounds for the making of a report or recommendation that could adversely affect them.

The Board and the accident employer were invited to make representations respecting the possible adverse report or recommendation and it was suggested that, when making these representations, they should relate to this following possible conclusions and possible recommendations:

"A. Possible Conclusions

- 1) It is open to me to conclude that [the complainant] is totally disabled. This is substantiated by the following reports submitted to The Workmen's Compensation Board on [the complainant's] behalf:
 - i) A medical report dated February 14, 1974 which indicated that there was absolutely no question that [the complainant] was 100% disabled, both physically as well as emotionally, because of long drug use and the difficulty he experienced in dealing with The Workmen's Compensation Board.
 - ii) A medical report dated October 18, 1974 indicating that [the complainant] was useless as a part of the labour force.
 - iii) A chiropractor's report dated August 6, 1975 indicating [the complainant] was to be considered totally and 100% disabled.
 - iv) A orthopaedic surgeon's report dated June 22, 1975 indicating that [the complainant] was then, and would continue to be, totally disabled.
 - v) A neuro-psychiatrist's report dated November 17, 1975 indicating that he would rate [the complainant's] level of disability higher than the level indicated by previous consultants. This particular neuro-psychiatrist was of the opinion that [the complainant] was moderately to nearly completely disabled.
- 2) It appears open to me to conclude that [the complainant's] total disability is attributable to the May, 1957 accident. I am of the opinion that this position is supported by the statements found in the following medical reports:
 - i) A medical report dated February 14, 1974 which indicated that, in this medical practitioner's mind, there

was absolutely no question that [the complainant] was 100% disabled physically as well as emotionally.

- ii) A chiropractor's report dated August 6, 1975 which indicated that, taking into consideration the degree of neurological deficit apparent in the examination of [the complainant's] right leg and the gross dysfunction of his lumbosacral spine, he must be considered toally and 100% disabled.
- iii) A neuro-psychiatrist's report dated November 17, 1975 in which the physician indicated that, on the basis of his three back surgical procedures and neurological complications of the nerve root injury, and permanent leg weakness, he was of the opinion that [the complainant] was moderately to nearly completely disabled. The neuro-psychiatrist added that [the complainant's] Demerol addiction and accident neurosis further added to this. He expressed the opinion that [the complainant] was completely disabled by this combination, if not by each condition, if it should act independently.

This position is supported by a medical report dated February 14, 1974 in which the physician indicates that the important fact is that, had [the complainant] not been injured at work - regardless of what has happened since - he would now be healthy, not disabled, and his home and married life would not have been continually upset due to battles with The Workmen's Compensation Board.

As well, the neuro-psychiatrist's report of November 17, 1975 should be noted, particularly where the doctor indicates that he was of the opinion that it is reasonable to regard [the complainant's] Demerol addiction as a complication of his treatment.

The May 16, 1957 accident appears to be the sole cause of [the complainant's] physical problems. My investigation did not reveal any evidence which would indicate the presence of any pre-existing disabilities or other accidents.

It appears open to me to conclude that the 1957 accident had also contributed significantly to [the complainant's] functional and drug addiction problems.

- 3) I am of the opinion that this position is supported by a memo dated September 12, 1974 prepared by The Workmen's Compensation Board's Chief Pensions Medical Office in which the doctor indicates that there really seemed to have been no change in [the complainant's] condition since December 19, 1967, the date the Appeal Tribunal denied [the complainant's] appeal for a 100% Permanent Disability Award. The doctor, in the same memo, went on to say that [the complainant] had been totally disabled for many years and speculated as to the causes of this condition. It would appear open to me to conclude that the complainant has been totally disabled since at least December 19, 1967."

"B. Possible Recommendations

- 1) The Appeal Board should vary its decision dated February 18, 1975, and order that [the complainant] receive a Permanent Disability Award of 100%.
- 2) This 100% pension award should be made retroactive to December 19, 1967."

As a result of our Section 19(3) letter, the complainant's former employer responded by letter that although they were unable to comment on the case since it was impossible for them to judge the degree of the complainant's disability and whether or not the disability was solely related to the accident in 1957, they would be pleased to co-operate with the Ombudsman and make any information available to him. The Workmen's Compensation Board responded by informing the Ombudsman that as a result of our letter, the complainant had been referred to a neuro-psychiatrist and that, as a result of the Ombudsman's investigation and the neuro-psychiatrist's report, the Appeal Board concurred with the general recommendation made by the Ombudsman and in this regard would amend the Appeal Board's decision of February 18, 1975 to provide for:

- 1) recognition of the drug addiction as part of the complainant's entitlement
- 2) the complainant being awarded a 100% Permanent Disability pension dating from December 19, 1967 less payments made to date

- 3) 50% of the total cost of this worker's claim being removed from the employer's cost records and transferred to the Second Injury and Enhancement Fund.

A copy of this decision was forwarded to the complainant by The Workmen's Compensation Board. In addition, the Ombudsman informed the complainant of the resolution of his complaint.

(88) SUMMARY OF COMPLAINT

The complainant in this case was employed with an electrical firm. In June, 1965, during the course of his employment, the worker bent over to lift a heavy carton and injured his back. Conservative treatment was administered for back strain and the worker returned to work approximately three days later. A claim was submitted to The Workmen's Compensation Board and benefits were awarded for the acute period.

In November, 1965, the worker suffered a second injury during the course of his employment. Although no lost time was recorded for this second accident, a claim was recognized to cover the cost of medical aid.

In late 1976, the worker noticed the continual onset of back pain which he attributed to his compensable injuries. The worker approached the Board and requested further entitlement for his back disability. The Board's medical staff noted that the worker suffered from a hip disease known as Legg-perthes. The Board concluded that the worker's back disability was related to this disease and not the compensable accidents. In light of this fact, the worker was denied any further benefits for the two claims in 1965. After receiving an adverse decision from the final level of appeal at the Board, the worker brought his complaint to the attention of the Ombudsman.

Our initial interview with this worker was conducted during the Ombudsman's private hearings in a southern Ontario city. During the initial interview, the worker contended that he should receive benefits for any future lay offs in addition to a Permanent Partial Disability pension as a result of his compensable accidents in June and November of 1965. It was determined that the worker's complaint was within the jurisdiction of the Ombudsman and, accordingly, a letter pursuant to Section 19(1) of The Ombudsman Act was forwarded to the Chairman of The Workmen's Compensation Board. This letter informed the Chairman of the Board of the Ombudsman's intention to investigate this complaint.

Our investigation included personal interviews with the complainant and his treating orthopaedic surgeon. In addition, the worker's Board file was requested and reviewed in its entirety. The investigation revealed that the worker had suffered from a hip disease as far back as 1950. The medical evidence contained in the worker's file indicated that any

back disability, in this case, would be attributed to this hip disease and not the compensable injuries.

It was the Ombudsman's decision that The Workmen's Compensation Board was not unreasonable in denying the worker further entitlement for his 1965 claims. It was also the opinion of the Ombudsman that the facts of this case did not support a recommendation to The Workmen's Compensation Board pursuant to Section 22(3) of The Ombudsman Act.

Reporting letters to this effect were sent to the worker and to the Chairman of The Workmen's Compensation Board.

(89) SUMMARY OF COMPLAINT

This case involved a worker employed on the assembly line of an automobile firm from 1963 to 1973. In 1965, the worker began to experience continual back pain which he related to the type of work he performed. After a series of lay offs, the worker sought medical attention for his persistent back problems. The treating physician, at the time, felt that a spinal fusion was necessary to correct the worker's disability. Following the 1971 spinal fusion, the worker returned to the automobile firm and performed work of a light nature. Workmen's Compensation benefits were never sought during these lay offs or hospitalization periods as the company's medical insurance plan covered medical costs and payments to the worker. The complainant continued to work until June, 1973, at which time he injured his lower back while lifting a heavy carton. Medical treatment was sought and the worker never returned to his employment. Following this last injury, the worker applied to The Workmen's Compensation Board for benefits.

The Board denied payments in this case stating that the worker's ongoing back disability was not related to his employment. The Board also maintained that following the June, 1973 accident, the complainant was medically fit to return to work of a light nature. This position was supported by a final Appeal Board hearing. Upon receipt of the Board's final decision, the worker contacted his local M.P.P. who, in turn, forwarded his complaint to our Office.

After contacting the worker, a letter pursuant to Section 19(1) of The Ombudsman Act was forwarded to the Chairman of The Workmen's Compensation Board. This letter informed the Board of the Ombudsman's intention to investigate this complaint. A copy of the Board's file pertaining to this worker was requested and the worker was interviewed on a number of different occasions. The former employer and the treating specialist were also contacted for additional information. Following the preliminary investigation, the M.P.P. involved in this case was contacted for any additional information he might have.

Our investigation revealed that the worker suffered from an arthritic condition which was not medically related to the type of work performed at the automobile plant. This opinion was confirmed by the treating specialist involved in his case. The investigation also revealed that the worker was fit to return to work of a light nature following his injury in June, 1973, but refused to accept employment with the same employer.

Based on the facts of this case, it was the Ombudsman's opinion that The Workmen's Compensation Board was not unreasonable in denying the worker further entitlement in this claim. Accordingly, it was the Ombudsman's opinion that a recommendation pursuant to Section 22 of The Ombudsman Act was not warranted. Reporting letters were forwarded to the worker, the Chairman of The Workmen's Compensation Board and the M.P.P. involved in this case.

(90) SUMMARY OF COMPLAINT

The worker in this case suffered a back injury in 1971 while performing her functions as a nursing aid in a home for the elderly. This injury occurred when the worker attempted to prevent a patient from falling out of bed. The worker did not seek medical attention for this injury until approximately one month after the accident. Following medical treatment, the worker submitted a claim to The Workmen's Compensation Board. Considering the length of time required to seek medical attention, the Board questioned the extent of the injury. However, it was the Board's opinion that the benefit of the doubt should be extended to the worker and Temporary Total benefits were awarded for the acute period. These benefits were reduced to 25% for a six week period and then terminated. In addition, the worker was awarded a 20% disability pension for life.

The worker appealed to the Board for an increase in the 25% benefits in addition to an increase in the 20% Permanent pension. After considering the facts of the case, the Board denied both requests. This decision was upheld by the Appeal Board. Following this final decision, the worker forwarded a complaint to our Office.

We determined that this complaint was within the jurisdiction of the Ombudsman and, accordingly, a letter pursuant to Section 19(1) of The Ombudsman Act was forwarded to the Chairman of The Workmen's Compensation Board. This letter informed the Chairman of the Ombudsman's intent to investigate and requested all documents pertaining to the worker's case.

Throughout this investigation, the worker was personally interviewed on a number of occasions. In addition, senior representatives of the Board were contacted to discuss the particulars of the case. The worker's Board file, including all medical documents, was thoroughly reviewed.

Our investigation revealed that the worker had suffered a previous back injury in March, 1965. It was noted that the Board had awarded benefits for this previous injury. The medical evidence indicated that following her second injury, the worker could have returned to work of a light nature. There was no medical indication of extensive disability resulting from either injury.

After reviewing the facts, it was the Ombudsman's conclusion that the Board was not unreasonable in denying the worker an increase in her 20% Permanent Disability pension. However, it was the Ombudsman's opinion that further consideration should be given to the decision which reduced the worker's Temporary benefits to 25%. The Ombudsman felt that the worker should have received Temporary Total benefits until such time as she returned to work. It was noted that at the time when benefits were reduced, the worker was actively seeking employment. A letter was sent to the Board to obtain its views regarding the reduction of Temporary Total benefits. In its response, the Board agreed that further consideration should be given to the matter of reducing the worker's benefits and the Board stated that a new hearing would be granted to consider increasing the worker's 25% Partial benefits. Reporting letters were subsequently forwarded to the worker and to the Chairman of The Workmen's Compensation Board informing them of the disposition of this case.

(91) SUMMARY OF COMPLAINT

This case involved a worker employed as a cook aboard a steamship. In November, 1969, the worker was carrying out his duties on board ship when, due to rough lake conditions, a piece of furniture toppled over and landed on his right shoulder. At the time, this injury did not appear to be of any significance. The following day, while on board the same ship, the worker slipped and fell on an icy deck, receiving a mild blow to the back of the head. Some months later, the worker reported the onset of severe headaches.

A claim was submitted to The Workmen's Compensation Board and the worker was admitted to the Board's Rehabilitation Centre for conservative treatment. Upon his discharge from the hospital, the worker was advised to return to work of a light nature. Due to his age, 64 years at that time, he was advised not to return to his former occupation on board the ship. Although the worker never returned to any form of employment, he continued to complain of headaches, dizziness and neck pain. In light of these continuing complaints, the Board agreed to have him undergo further medical examination.

The majority of consulting doctors were of the opinion that most of the worker's complaints were psychogenic in origin. In considering the relatively minor nature of the complainant's accidents, the doctors stated that the extent of his organic

disability was extremely limited. The worker repeatedly expressed his anger that the medical doctors could not find any organic disability. The worker requested that the Board award him a Total Disability pension for the residual disability arising from the compensable accident in November, 1969. The Appeal Board ruled that the complainant was entitled to a 10% Permanent Disability award. Based on the available medical evidence, the Board felt that a 10% Award was generous.

Dissatisfied with the Board's ruling, the worker approached the Injured Worker's Consultants in July, 1976. This organization informed the worker that, due to the status of his case, it did not have the jurisdiction to be of assistance. The worker was advised to contact our Office and did so.

Our Office determined that it was within the Ombudsman's jurisdiction to investigate this complaint. Accordingly, a letter pursuant to Section 19(1) of The Ombudsman Act was forwarded to The Workmen's Compensation Board. This letter informed the Board of our intention to investigate and requested a copy of all documents pertaining to the worker.

Our investigation of this matter included further consultations with the worker and discussions with senior representatives of the Board. The Board's file was reviewed in its entirety.

Our investigation revealed that the medical evidence did not support the worker's contention of entitlement to Total Disability benefits. A number of medical documents stated that the worker suffered from a non-compensable, psychological disorder. Documents pertaining to the worker's rehabilitative program indicated that the possibilities of returning to work were quite positive.

Based on the facts of this case, it was the Ombudsman's opinion that the Board was not unreasonable in denying this worker further benefits for his claim. A reporting letter was forwarded to the worker and the Chairman of the Board stating that the Ombudsman was unable to support the worker's claim for further benefits.

(92)

SUMMARY OF COMPLAINT

This complainant suffered a shoulder injury while working in a mine in February, 1973. The extent of his injury, initially diagnosed as a bruise, was not realized until January, 1974, when it became evident that the complainant had, in fact, suffered a dislocated shoulder. However, because of the delay in diagnosing the injury, the dislocation could not be repaired surgically, leaving the complainant with a permanent disability in his shoulder which permanently disabled him from returning to his regular employment in the mine.

The Workmen's Compensation Board, together with Canada Manpower, sponsored the complainant in an upgrading course at a local community college where he could learn a trade. For

the duration of the three-year course, the complainant was paid full benefits less that which he received from Canada Manpower, pursuant to Section 53 of The Workmen's Compensation Act.

The complainant successfully completed his course; however, due to the employment situation, he was unable to gain employment in his field immediately upon graduation.

The complainant wrote to our Office in mid-May, 1977, with the complaint that the Board had terminated his benefits immediately upon graduation even though he was still disabled from returning to his previous accident employment and had not yet obtained employment in his new trade, although he was actively seeking such employment. He was of the view that under the circumstances, he was entitled to compensation under Section 41 of The Workmen's Compensation Act.

Our Investigator contacted a senior counsellor at the Board to determine the reason the complainant had not been awarded compensation under Section 41 of the Act as of the date he graduated in his course. As a result of our inquiry, the Board reviewed the complainant's file and agreed that it had been in error in not continuing the complainant's payments after his graduation while he remained unemployed. Accordingly, the complainant was fully compensated for the six-week period between the time he graduated and the time he commenced employment in his new trade.

(93) SUMMARY OF COMPLAINT

In July, 1974, this complainant injured his back while moving objects at his place of employment. The incident was not immediately reported and, therefore, a Workmen's Compensation Board field investigation was conducted. The information obtained convinced the Board to allow the claim on an aggravation basis, the Board having noted a pre-existing, degenerative disc disease. The allowance and payment of Temporary Total Disability benefits took place in January, 1975 and arrangements were subsequently made for the complainant to be admitted to the Board's Hospital and Rehabilitation Centre.

Although the complainant presented himself at the Centre as arranged, he was apprehensive about treatment and about being away from home and he refused to stay. The Board and the complainant's doctor agreed that referral to an orthopaedic specialist was in order and the complainant was advised that benefits would not resume until the specialist's report was received.

Meanwhile, in April, 1975, the complainant was operating a tractor on his own property when he was involved in an accident. Apparently, the front wheels of the tractor ran over a tree lying on the ground, causing the fallen tree to spring up towards the complainant. He attempted to ward off the tree with both hands and at the same time he tried to stop the tractor. The

complainant contended that the soreness in his back rendered him incapable of properly manoeuvring the pedals of the tractor. As a result, the tractor remained in motion and the complainant was thrown forward, striking his eye on the handle of the tractor. The incident resulted in the loss of the complainant's right eye.

The Board became aware of the complainant's eye injury only after receiving a letter from the CBC Ombudsman. This was the first indication that a relationship might exist between the complainant's compensable back condition and the more recent eye injury. Again, a field investigation was conducted by the Board concerning the accident involving the tractor. An orthopaedic specialist's report dated June, 1975, was also received. After reviewing all the information, the Board allowed the complainant Temporary Total Disability benefits. The Board felt the fall from the tractor could have aggravated the condition of the complainant's back and thus was contributing to his ongoing back disablement. However, the eye injury was not accepted either as within the claim entitlement or as a result of his compensable back condition.

In January, 1976, the complainant's back condition was assessed by the Board's Pensions Branch and a 19.5% Permanent Disability pension was awarded. The degree of this award was never contested. However, after exhausting the appeal process, the complainant had not been able to obtain additional benefits for his eye injury.

The complainant's original correspondence brought to our attention his claim for additional benefits because of his eye injury. The Board was informed by letter of our intention to investigate this complaint and the complainant was interviewed concerning the issues involved.

Our investigation involved a review of the Board's file, including medical reports available with respect to the complainant's back condition, both subsequent to the compensable injury of July, 1974, and prior to the non-compensable eye injury of April, 1975. This medical information did not establish that a substantial back disability existed. A review of the history of the tractor mishap in April indicated that the complainant himself was uncertain as to whether the tree which struck the tractor had not indeed lodged between the pedals, thereby making it difficult to properly control the vehicle.

His account of this work being performed also indicated that he had done a similar job the day prior to the incident and had noted only a very slight residual back pain. It was also noted that the unanimous opinion of the complainant's doctors was that the complainant had not been told to perform this type of work as a rehabilitative measure and that, therefore, he had done so of his own volition.

The Board, although not accepting the April, 1975, eye injury as within the claim entitlement, considered that the

incident aggravated the compensable back disability and restored full Temporary Total Disability benefits. The award of a Permanent Disability in January, 1976, also appeared to adequately reflect the relationship between the residual back disability and the compensable injury of July, 1974.

It was concluded that the complaint against The Workmen's Compensation Board could not be supported since it could not be shown that the compensable back disability in any way contributed to the complainant's inability to react during the tractor accident of April, 1975. The complainant and the Board were informed of the findings of our investigation.

(94) SUMMARY OF COMPLAINT

This complainant was away from work for three days in the spring of 1974 due to an injury he suffered at work. He submitted a claim for Workmen's Compensation benefits at that time and although he received notification from the Board that his claim had been allowed, he had not received the benefits for which he had been informed he was entitled.

The complainant had brought this matter to the Board's attention on several occasions since 1974. On one occasion, the Board responded by informing the complainant that a review of his file indicated that he had been compensated for his loss of wages and the Board forwarded him a photocopy of the cheque which had been issued under his claim number. Attached to this letter and the cheque was an affidavit which the Board requested the complainant complete and return in the event that he wished to swear before a Notary Public or a Justice of the Peace that he had not received nor cashed the cheque.

The cheque and the affidavit, although bearing the complainant's address, bore the name and claim number of another claimant whose first name was similar to that of the complainant, whose last name was the same and who resided in the same area as the complainant. The complainant notified the Board that, although he could not sign an affidavit that did not bear his name, he wished to swear that the cheque in question had neither been received nor cashed by him. The last correspondence the complainant received from the Board was in July, 1975, when his Claims Adjudicator agreed that an error had been made and indicated that once the confusion had been sorted out, he would receive his compensation.

When the matter had still not been settled, the complainant's wife attended the Ombudsman's private hearings in Central Ontario and informed one of our Investigators of her husband's complaint. Our Investigator contacted a senior counsellor at the Board and requested that both the complainant's file and the file of the claimant with the similar name be reviewed together so that the Board could recognize its error and issue a cheque to the complainant.

In June, 1977, the complainant was issued a cheque compensating him for the loss of wages he suffered for the three days he was away from work in the spring of 1974.

(95)

SUMMARY OF COMPLAINT

In 1969, this complainant suffered a wrist injury while employed as a labourer with a small construction firm. A hand compressor, operated by the worker, jolted out of place, striking his right wrist. Since the force of this blow was severe enough to draw blood, the worker reported the incident to his employer. The worker was informed that The Workmen's Compensation Board would be notified of the incident. According to the firm's employment records, this incident did not involve any loss of time from work.

The worker did not seek medical attention for his wrist injury until May, 1971, at which time the hand injury was casually mentioned during a general physical examination. Following this examination, the worker returned to work until November, 1973, when he left work due to increased problems with his right hand. The complainant had not worked since that time.

In November, 1975, the worker submitted a claim to The Workmen's Compensation Board. After considering the facts of his case, the Board ruled that insufficient evidence existed to establish that an accident did, in fact, occur. In addition, the Board ruled that even if it could have been shown that an accident occurred, the diagnosed condition could not be related to the alleged injury. It should be noted that the Board did not have on file an employer's report of the accident. Entitlement to benefits was denied by all levels of appeal within the Board's structure.

After receiving notification of the Board's final decision, the worker approached his local M.P.P. who, in turn, forwarded his complaint to our Office.

After contacting the worker, a letter pursuant to Section 19(1) of The Ombudsman Act was forwarded to The Workmen's Compensation Board. The letter informed the Board of the Ombudsman's intention to investigate this complaint and requested that a copy of all documents pertaining to the worker's claim be forwarded to our Office. Our investigation involved personal interviews with the complainant, the former employer, the treating specialist and the M.P.P. In addition, the worker's Board file was reviewed.

Our investigation revealed that the worker suffered a lesion of the right radial nerve above the wrist. The medical specialist consulted was of the opinion that the worker's disability was related to a mild form of polio present long before the worker sustained the alleged injury. This opinion was supported by the Board's medical staff. There did not exist any medical reports which directly attributed the

complainant's ongoing wrist disability to his compensable injury. The investigation also noted that the worker did not seek medical attention for his injury until about two years after the incident. The worker's case was further complicated with the issue of accident recognition. Consistent with the Board's records, our investigation revealed that an employer's accident report was never submitted to The Workmen's Compensation Board. This issue was then discussed with the employer. After a second examination of his records, the employer reported no indication of the worker injuring himself while employed with the construction firm.

Based on the above facts, it was the Ombudsman's opinion that The Workmen's Compensation Board was not unreasonable in denying the worker benefits for his claim. As the facts did not support the worker's contention, it was the Ombudsman's opinion that a recommendation pursuant to Section 22 of The Ombudsman Act was not warranted. Reporting letters to this effect were forwarded to the worker, the Chairman of The Workmen's Compensation Board and the M.P.P. involved in this case.

(96) SUMMARY OF COMPLAINT

This complainant had four claims with The Workmen's Compensation Board: two dealing with wrist injuries, one for a back injury and one for a right ankle injury.

In 1942, the complainant suffered an injury to his left wrist. Thirty years later, the complainant felt a sharp pain in his right wrist while performing his usual work. He continued working for 2½ months and then stopped working as his wrist was swollen and painful. He claimed compensation on the grounds that his recent wrist condition was a result of an aggravation of the injury he suffered 30 years earlier, maintaining that it was the right not the left wrist he had injured in 1942.

The complainant's claim was consistently denied through the appeal process of The Workmen's Compensation Board.

In 1954, the complainant fell from a ladder and suffered a compound fracture of his right ankle. Following corrective surgery and a one-year recuperative period, the complainant returned to his regular job. Two years later, however, the complainant began to experience further problems with the ankle causing him to miss considerable time from work between 1957 and 1973. In 1975, the complainant was awarded a 30% pension which was an increase over the original 12% he had been awarded in 1957 and also an increase over the 20% he had been awarded in 1972. This 30% pension, which recognized the deterioration in his ankle since the original assessment, was confirmed by the Appeal Board.

In April, 1963, the complainant suffered an injury diagnosed as a low back strain for which he was off work and in receipt of compensation benefits for one week.

In late 1976, the complainant's M.P.P. brought this complaint to the attention of the Ombudsman. The M.P.P. informed our Office that the complainant was of the view that he was totally disabled from performing any type of employment as a result of a combination of the residual effects of the four accidents he had suffered at work but that his pension did not reflect such disability.

We established that this complaint was within the Ombudsman's jurisdiction to investigate and, accordingly, pursuant to Section 19(1) of The Ombudsman Act, The Workmen's Compensation Board was informed of the Ombudsman's intention to investigate the complainant's contention. In response, the Board forwarded a copy of the complainant's Board files.

Our investigation into this complaint involved a thorough review of the complainant's files. As well, both the complainant and his M.P.P. were interviewed in person and over the telephone. The complainant's specialist was asked for his opinion in writing of the relationship between the complainant's current wrist disability and the injuries he suffered to his wrist at work.

The medical evidence regarding the complainant's wrist disability indicated that the condition from which the complainant was suffering was the result of a degenerative disease in the wrist which could be attributable to neither of the accidents he had suffered at work.

The investigation of the complainant's right ankle disability revealed that the pension he had been awarded by The Workmen's Compensation Board was based on the Board's rating schedule which rates the loss of a foot by amputation at the ankle at 25%. The complainant received the equivalent of having lost his foot and an additional 5% for pain and suffering.

The Ombudsman did not investigate the complainant's back injury complaint as this was found to be an issue which the worker could still appeal.

The facts of the case were presented to the Ombudsman who concluded that, given the medical evidence of the claim involving the complainant's right wrist, The Workmen's Compensation Board had not acted unreasonably in denying the complainant's claim for entitlement for the right wrist disability. With respect to the complainant's contention that his 30% pension for his right ankle disability was inadequate, the Ombudsman concluded that given the rating schedule on which the Board bases Permanent Disability awards, the Board had not acted unreasonably in its assessment of the complainant's ankle disability. Regarding the back disability, the Ombudsman concluded that there was sufficient evidence on which the complainant could base an appeal to the effect that his residual

right ankle disability had resulted in an aggravation of the back injury he had suffered in 1963.

The complainant's M.P.P. was contacted by our Investigator and the conclusions we had reached regarding this complaint were discussed with him. The M.P.P. was in full agreement with the conclusions and opinions which the Ombudsman had formed.

As the Ombudsman concluded that The Workmen's Compensation Board had not acted contrary to Section 22(1) of The Ombudsman Act, the complainant and The Workmen's Compensation Board were notified of his findings.

(97)

SUMMARY OF COMPLAINT

In December, 1973, this complainant who was employed as a maintenance man was lifting a heavy roll of carpet when he strained his lower back. At the time of the accident, it was estimated that he would be away from work for approximately four weeks.

The complainant, however, did not return to work and in the meantime, his claim for compensation was allowed by The Workmen's Compensation Board. He was paid Temporary Total Disability benefits until February, 1975, at which time his benefits were reduced to Temporary Partial Disability benefits at a rate of 50%. In December, 1975, his Permanent Residual Back Disability was assessed at 15%.

The complainant was initially under the care of his family physician and an orthopaedic surgeon, both of whom agreed that the complainant had fully recovered from his strain by April, 1974, and that he could return to work, but after one week he left because of back pain. The physicians involved in the complainant's care, including three orthopaedic surgeons, a neuro-surgeon, two family practitioners and a number of Workmen's Compensation Board doctors were of the opinion that there was no organic component to account for the complainant's symptoms and recommended rehabilitation into the labour force. The complainant was admitted to the Workmen's Compensation Board Hospital and Rehabilitation Centre for one month in the fall of 1974 and was discharged and considered fit to return to modified work.

The Workmen's Compensation Board then continued to pay 100% benefits until February, 1975, when they were reduced to 50%. This decision was based on a report from an orthopaedic surgeon who stated that the complainant was fit to return to modified employment and that no further treatment was necessary. As well, a vocational rehabilitation report at that time indicated that the complainant's file would be considered for termination as he still considered himself to be totally disabled and unable to do even the lightest type of work. Shortly thereafter, the rehabilitation file was closed.

The complainant's rehabilitation file was reopened in October, 1975, because the complainant stated that he had registered with Canada Manpower and was actively seeking work. It was found, however, that this was not the case and the file was again closed at the end of the month.

In early December of that year, the complainant was awarded a 15% Permanent Disability Award.

The complainant appealed the Award requesting an increase in his Permanent Disability Award and entitlement to Temporary Total Disability benefits for the period of mid-February of 1975 to early December, 1975. Although his appeal was consistently denied, the Appeal Board directed that the case be referred to the Rehabilitation Branch once again since the complainant stated to the Appeal Board that he would be interested in co-operating with that Department in seeking suitable employment.

In April, 1976, the complainant was once again contacted by the Rehabilitation Department, the purpose being to discuss the feasibility of any further rehabilitation involvement. It was again decided that the file would be closed since the complainant considered himself totally disabled and unable to work.

In March, 1977, the complainant was again examined by a member of the Board's Pensions Medical Department and the examination revealed that his back disability was essentially unchanged and the pension assessment was still judged to be 15%.

The complainant brought his complaint to our attention when he attended the Ombudsman's Office for a personal interview. We determined that because the complainant had exhausted all of his rights of appeal at The Workmen's Compensation Board, his complaint was within the Ombudsman's jurisdiction to investigate. Accordingly, pursuant to Section 19(1) of The Ombudsman Act, The Workmen's Compensation Board was informed of the Ombudsman's intention to investigate the complainant's contention that he had suffered a compensable injury which had not been adequately compensated for by the Board. The Board responded by forwarding to the Ombudsman a copy of the complainant's Board file.

Our investigation of the complainant's contention involved a thorough review of the complainant's file, several interviews with the complainant by an Italian-speaking Investigator and an up-to-date medical report from the complainant's orthopaedic surgeon.

Our Investigator, after reviewing this case thoroughly, presented the facts to the Ombudsman who concluded that, based on the medical evidence in the case which indicated that the complainant had recovered from his industrial accident by April, 1974, and the fact that the complainant did not return to work for reasons other than medical or the current employment situation, The Workmen's Compensation Board had not acted unreasonably in reducing the complainant's benefits by 50% in February, 1975. The Ombudsman also concluded that the

complainant had suffered a relatively minor strain superimposed on a degenerative back condition. The medical evidence indicated further that the complainant had recovered from the strain by April, 1974, with relatively minor residual effects and that the degenerative condition, although it did not render him totally disabled, was largely responsible for the continued complaints of back discomfort. Accordingly, the Ombudsman concluded that The Workmen's Compensation Board had not acted unreasonably in awarding the complainant a 15% pension.

The complainant and The Workmen's Compensation Board were informed of the Ombudsman's findings by letter.

(98)

SUMMARY OF COMPLAINT

This complainant strained his back during the course of his employment as a miner in January, 1967. The x-rays taken immediately after the accident revealed degenerative disc disease with disc space narrowing at two levels in the lower back. It was noted by the physician that this degenerative condition had been present since at least 1965 when x-rays had last been taken and the same disc spaces were evident.

The Workmen's Compensation Board allowed the complainant's claim for compensation on the basis of an aggravation of a pre-existing back condition, that is, a low back strain superimposed on degenerative disc disease. He was paid Temporary Total and Temporary Partial Disability benefits from the date of the accident until June, 1968, when his permanent residual back disability was assessed at 10% and he was awarded a pension accordingly.

The complainant appealed the amount of his pension through the entire appeal procedure of The Workmen's Compensation Board and despite five additional assessments by Pension Medical Officers at The Workmen's Compensation Board and examinations by five independent specialists, the complainant's appeals were consistently denied.

The complainant's former M.P.P. referred this complaint to us and informed our Office that the complainant remained dissatisfied with the final decision in his case. We determined that this complaint was within the Ombudsman's jurisdiction to investigate and the Board was advised pursuant to Section 19(1) of The Ombudsman Act of the Ombudsman's intention to investigate the complainant's contention that he had suffered a compensable injury which had not been adequately compensated for by the Board. The Board responded by forwarding the Ombudsman a copy of the complainant's Board file.

Our investigation of this complaint involved a thorough review of the complainant's Board file and several telephone interviews with the complainant.

The information available indicated that the complainant had not returned to work since his accident and he was of the

view, therefore, that his Permanent Disability Award did not truly reflect the loss of wages he had suffered as a result of his accident. The medical evidence, however, indicated that the complainant had recovered from his back strain and could have returned to light, modified work within 12 months of his accident as no treatment, other than the usual back hygiene, was required. Unfortunately, such work did not seem to be available in the area which the complainant resided.

The facts of this case were presented to the Ombudsman who concluded that the deteriorating factor could not be attributed to circumstances related to either the complainant's employment or the accident he suffered in the course of his employment. The Ombudsman concluded further that the Board had not acted unreasonably in awarding the complainant a 10% pension for a minor back strain he suffered at work.

The complainant and The Workmen's Compensation Board were informed of the Ombudsman's conclusions by letter.

(99)

SUMMARY OF COMPLAINT

In June, 1975, the complainant suffered a heart attack while at work as a chef and was off work for 13½ months. The worker applied for compensation benefits immediately after his heart attack because he felt that his working conditions had contributed significantly to it. On that day, the temperature outside was 91°F. and humid, and the temperature in the kitchen was unbearable to him at 110°F. or more. The complainant also claimed that on that day, just after the peak noon hour rush, an extra group of about 30 people entered the restaurant and ordered the daily special which had been used up. The worker rushed to prepare more but began experiencing extreme dizziness, headache and pain in the chest and arm. A few hours later, he was admitted to hospital with a diagnosed coronary thrombosis with myocardial infarction.

The W.C.B. denied entitlement to benefits to this worker on the basis that his heart attack was due to the natural progression of pre-existing atherosclerosis unrelated to his employment. This denial of entitlement was upheld through all levels of appeal at the W.C.B.

However, the worker remained convinced that his heart attack was triggered by stress (heat and workload) at work and sought a further review of his claim. The Injured Worker's Consultants who had represented the worker before the Appeal Board referred his complaint to the Office of the Ombudsman.

The Board was notified of our intention to investigate the complaint pursuant to Section 19(1) of The Ombudsman Act. Our Investigator reviewed and summarized all the information on file and interviewed the complainant who was accompanied by his son. One of our Articling Law Students assisted the Investigator in interviewing this worker in his native language which was Greek. The complainant revealed in the discussion

that he felt his employer had placed unreasonable demands on him because as they became busier, he did not take on more help and the complainant was required to work twice as hard. He also indicated that he felt his employer was contesting the claim and that this affected the Board's decision.

Our Investigator contacted a senior official at the Assessment Revenue Branch and asked him whether the employer's assessment costs would increase if this claim were allowed for the period during which the complainant was in hospital. We were informed that a single claim such as this would not affect the employer financially at all.

We then contacted the complainant's heart specialist by letter and asked whether, in his opinion, the complainant's employment contributed significantly to the sudden manifestation of this coronary artery disease in the form of a heart attack. The doctor replied that it was possible that a relationship of this sort existed but he could not say it was probable. The question was discussed further when the physician was interviewed in person at his office by our Investigator. In the discussion, the physician explained in detail the etiology of coronary artery disease and the reason why it could not be definitely concluded that the complainant's heart attack at work was caused by the extreme stress of his employment.

Our Investigator then visited the restaurant where the worker had been employed for 8 months before his heart attack and interviewed the two owners. This investigation, which included reviewing the employer's books at the time of the accident, interviewing the present chef, and touring the premises, did not substantiate that the worker was under unusual stress in that occupation at the time of his attack. Although it had no doubt been hot, the kitchen was well-ventilated. The present chef stated that he was busy but could handle it. We found that the restaurant's income had substantially increased since the time of the complainant's heart attack, but that the same number of staff were meeting the increased demand.

Our Investigator later interviewed the person who worked as second chef with the complainant and who was working with him at the time of his heart attack. This person did not remember the day being either unusually hot or busy and felt that the number of employees at that time could definitely handle the business.

As a result of this investigation, the Ombudsman was unable to make a recommendation under Section 22(1) of The Ombudsman Act. The facts and medical opinion did not support a clear relationship between the complainant's employment and his heart attack. The Ombudsman concluded that the Appeal Board did not act unreasonably in deciding the complainant was not entitled to compensation benefits. Final reporting letters explaining this opinion and the reasons therefor were sent to the complainant and the W.C.B.

(100)

SUMMARY OF COMPLAINT

For approximately 27 years before June, 1974, this complainant worked for the same company in various positions. From 1964 to 1974, he was employed as a repairman in the noisest area of the plant which contained three electric arc furnaces and one larger continuous casting furnace. In the fall of 1969, he visited his family physician complaining of hearing loss. He was referred to an ear specialist and it was the opinion of both physicians that the worker suffered from a bi-lateral perceptive hearing loss which they believed was related to the high level of noise that he was exposed to at work.

Initially, this worker's claim for entitlement to compensation for industrially-induced deafness was denied. However, when new evidence concerning the levels of noise that he was exposed to was presented before the Appeal Tribunal, the complainant was granted entitlement for hearing loss occasioned by reason of his employment.

Nevertheless, he continued to work for the same company until the beginning of June, 1974, some 4½ years after his hearing loss was discovered. At that time, he left work due to depression. In the fall of 1974, his hearing was re-examined and he was rated for a Permanent Disability pension which was set at 8.4%. His pension was awarded retroactively to January 1, 1974, when the statute changed so that a pension could be paid for hearing loss even though the person had not stopped working. The pension was paid in the form of a lump sum payment.

The worker remained off work for approximately one year because of a diagnosed condition of endogenous depression. Between June, 1975 and late summer, 1976, the worker was employed in a number of temporary jobs. However, by August, 1976, he returned to work for his previous long-time employer in a full-time janitorial position.

The worker appealed his claim for further compensation benefits as a result of his hearing loss and his depression through the full appeal process at The Workmen's Compensation Board.

The Appeal Board denied him entitlement for his psychological condition as it was concluded that this was not related to his compensable hearing loss. The Board also denied him an increase in his lump sum Permanent Partial Disability award for his actual hearing loss due to the fact that his hearing, after testing, did not appear to have deteriorated further.

After the Appeal Board's denial of his appeal, the complainant visited our offices in person at the end of March, 1976. At that time, in an interview with one of our staff members, he registered his complaint against the Board saying that he felt that he was not being adequately compensated for the residual effects of his compensable industrial hearing loss.

In a letter dated April 26, 1976, we notified The Workmen's Compensation Board of our intention to investigate this complaint pursuant to Section 19(1) of The Ombudsman Act.

The case was assigned to an Investigator who thoroughly reviewed the complete file from the Board, focusing particularly upon all the medical evidence. The complainant was extensively interviewed over the telephone by our Investigator and our Investigator also interviewed the otolaryngologist to whom the Board had referred the worker for a hearing examination. During this meeting, the physician went over the results of the worker's various audiograms during the last six years and explained that they showed that the worker was suffering from an approximate 50 decibal hearing loss in each ear. According to the Board's Permanent Disability Rating Schedule, the total pension awarded was correct considering the amount of hearing loss. In addition, this specialist demonstrated that from the tests, the worker's hearing had not deteriorated in any significant way since it was first discovered in 1969-1970. The worker's initial otolaryngologist added no new information to this assessment and confirmed the same opinion.

With respect to the issue of the worker's claim to entitlement for further compensation benefits for his depression, our Investigator contacted both the worker's psychiatrist and his family physician. Our Investigator communicated the worker's complaint that he felt his depression was directly related to his compensable hearing loss in that he became more and more anxious and depressed at work because he could not hear the overhead crane warning signals and was increasingly worried that he was a safety hazard because of this disability.

However, both the complainant's family physician and his psychiatrist informed us that in their opinions the worker's diagnosed condition of endogenous depression was triggered primarily by factors other than his noisy work environment or his deafness. In their opinion, as his depression progressed, his deafness appeared to become a factor contributing to it; however, there was no supporting medical evidence that his depression was, in fact, causally related to his industrial hearing loss. With respect to the complainant's contention that he could not hear the overhead crane warning signal, the ear specialist who examined him informed our Office that these signals were of a very high intensity and that even with the amount of hearing loss that the worker suffered from, he would still be able to hear them.

During the course of our Investigator's discussion with the complainant, he mentioned that he felt he should be compensated for the difference in his earnings between his present position as a janitor and the earnings he would have been making if he had remained a repairman. It was explained to the complainant that earnings difference compensation benefits are paid only when a worker's present earnings are less than his earnings at the time of his accident or the on-set of his disability. In this worker's case, his present

earnings were more than his earnings as a repairman when he quit that job in 1974. Therefore, it was explained to him that under Section 42(1) of The Workmen's Compensation Act, he was not entitled to any compensation other than his pension.

After reviewing all the facts and evidence regarding this complaint, the Ombudsman was unable to conclude that the Appeal Board decision was unreasonable. Reporting letters were sent to the Chairman of The Workmen's Compensation Board and to the complainant outlining the Ombudsman's investigation and conclusions.

SAMPLES OF LETTERS

SENT TO COMPLAINANTS

IN NON-JURISDICTIONAL CASES



The Ombudsman | Ontario

SUITE 600

65 QUEEN STREET WEST, TORONTO, ONTARIO

M5H 2M5

TELEPHONE (416) 869-

Dear Sir:

On August 2, 1977 we received letters from both yourself and your treating physician registering a complaint against the Workmen's Compensation Board.

Your correspondence indicated that subsequent to a Pensions Branch medical review of your residual back disability by the Workmen's Compensation Board, you receive a monthly Pension Award of \$61. You also receive a Pension Supplement in the amount of \$345 a month in order to assist you with your present financial situation and your attempt to secure suitable employment. You noted that the Supplementary Award was granted for a period of only 6 months.

In your letter you expressed the opinion that the \$61 a month pension is not adequate, and both you and your physician feel you are not capable of returning to work. You feel that you are totally disabled and, therefore, entitled to Temporary Total Disability Benefits since May 16, 1977, the date on which your pension commenced.

I recently spoke with senior officials of the Workmen's Compensation Board with respect to your complaint. They advised me that on May 17, 1977 the Pensions Branch of the Workmen's Compensation Board assessed your Permanent Residual Back Disability at 15%. This results in a monthly award of \$61. The supplement of \$345 for a period of 6 months was also confirmed by the senior official.

The Workmen's Compensation Board has also indicated that Temporary Total Disability Benefits were restored during the period June 25, 1977 to July 16, 1977. The Workmen's Compensation Board has indicated that it is presently evaluating the medical evidence available in order to determine whether Temporary Total Disability Benefits will be awarded beyond July 16, 1977 or whether your previously assessed pension will continue.

You should be aware that decisions made by the Workmen's Compensation Board may be appealed. If in your opinion you have been totally disabled since May 16, 1977, as a result of your compensable back disability, you may appeal the Workmen's Compensation Board's decision not to award ongoing Temporary Total Disability Benefits. If you feel the 15% Permanent Disability assessment does not adequately reflect your degree of disability, you may also appeal the percentage of pension which has been awarded. However, you

should be aware that you cannot receive more than 100% benefits for any given time period. Therefore, if you are in receipt of Total Temporary Benefits, the amount of your continuing monthly pension will be deducted from your Temporary Benefits.

It would be helpful to substantiate any appeal with a detailed medical report from your attending physician and, if possible, your attending specialist, outlining the extent of your disability in terms of your ability to return to work.

For your information and assistance, I am enclosing a guideline to the Workmen's Compensation Board Appeal Process with this letter. You will notice that the first paragraph states that, by virtue of section 15(4) of The Ombudsman Act, the Ombudsman cannot investigate Workmen's Compensation Board decisions until the entire appeal process has been completed.

Although for the reasons I have given, the Ombudsman has no jurisdiction to be of direct assistance to you at this time, I hope we have given you enough information to proceed with whatever steps you may decide to take. If, having completed the Appeal Process you are not satisfied with the decision, you may then get in touch with this Office again, because at that time the Ombudsman will have jurisdiction and will be pleased to give your complaint every consideration.

If you have any comments or questions regarding the above information or require the Ombudsman's assistance in the future, please do not hesitate to contact this Office again.

Yours very truly,

Enclosure

GUIDELINE TO THE WORKMEN'S COMPENSATION BOARD'S APPEAL PROCESS

Section 15(4) of The Ombudsman Act prohibits the Ombudsman from getting involved in any Workmen's Compensation Board claims until the entire appeal process of the Workmen's Compensation Board has been completed. If you wish to appeal a decision concerning your claim, you should write to the Registrar of Appeals, 2 Bloor Street East, Toronto, Ontario, M4W 3C3, enclosing your claim number.

The following paragraphs will help explain the appeal process a little more clearly. There are three basic steps to the appeal process, and below is a brief outline of all of them:

1. Review Branch

The first step in the appeal procedure is the Review Branch, which will peruse your file and render its decision and advise you. If their decision is not in your favour, you should ask for "the summary of information" on which the Review Branch denial is based. Once you have received that, read it over carefully and if you still disagree, go on to the second step.

2. Appeals Examiner

The second step is a hearing which is conducted before an Appeals Examiner which you should attend and to which you may bring any representative of your choice, if you so choose. If you are turned down once more, you can go on to the next and final step.

3. Appeal Board

The hearing before the Appeal Board is conducted by three officers of the Workmen's Compensation Board and it is the final step in the appeal procedure established under The Workmen's Compensation Act. Again, you may bring along someone to represent you.

The three steps outlined above are not as complicated as they may seem - in fact, are really quite simple. However, if you feel you need assistance at any stage before the Ombudsman acquires jurisdiction, we suggest you approach your Member of the Legislature (your MPP) for assistance. There is not one of them, I am sure, who would not be willing to assist a constituent with a Workmen's Compensation problem.

If you are a member of a union, you may wish to seek its assistance with your appeals.

Also available to you are the services of the Worker's Advisors, who have been appointed by the Workmen's Compensation Board. If you want to use their services, you should get in touch with the Worker's Advisors at the Workmen's Compensation Board.

Although for the reasons I have given the Ombudsman has no jurisdiction to be of direct assistance to you at this time, we hope we have given you enough information to proceed with whatever steps you may now decide to take. If, having completed the appeal process you are not satisfied with the result achieved, you should then get in touch with this office again, because at that stage the Ombudsman will have jurisdiction and will be more than pleased to give you every consideration and study to any complaint you may wish to bring to his attention. We can be reached at Suite 600 - 65 Queen Street West, Toronto, Ontario, M5H 2M5.



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-

Dear Madam:

This will acknowledge receipt of your letter dated March 17, 1977.

As we understand from your correspondence, you believe that you did not receive your full pension from the Teachers' Superannuation Commission because the Province of Quebec did not send the full actuarial value of that pension to Ontario. In your letter you enclosed correspondence from the office of the Minister of Education in Quebec saying that the Province would pay the full value of your pension as earned through your credit under the Plan in Quebec. You feel that you are entitled to this full pension and that the reciprocal agreement between Ontario and Quebec is short-changing retiring teachers.

We can well appreciate your concern; however, we must point out the limitations on the jurisdiction of the Ombudsman.

The Ombudsman Act, 1975 empowers the Ombudsman "to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or body of persons in his or its personal capacity."

Governmental organization has been defined to mean "a Ministry, commission, board or other administrative unit of the Government of Ontario, and includes any agency thereof."

As the matter you have raised is not a complaint against a specific decision or act, made or performed in the course of the administration of a governmental organization, but is a general criticism of government policy as reflected in The Teachers' Superannuation Act, it is not within the jurisdiction of the Ombudsman to investigate it.

Although it is beyond the jurisdiction of this Office, a member of our staff did contact Mr. Causley of the Teachers' Superannuation Commission. He told us that the Quebec Pension Fund had indicated to him that you had built an entitlement to a pension in Quebec. When you left that Province, you could have taken the pension with you or you could transfer the actuarial value of it to Ontario. You chose the latter.

Mr. Causley stated that you were, in fact, getting the full actuarial value of your pension from Quebec. That is, you are receiving your full pension as valued at the time of retirement. The confusion lies in the fact that the Ontario Pension Plan differs from that of Quebec. In Ontario, an individual is required to pay more into the program than in Quebec and the resulting pension is larger. In your case, Ontario has given you credit for the maximum amount allowable for your ten year service in the Province of Quebec. For the remainder of your service in Ontario, you were paying more into the Ontario Pension Fund than you were in Quebec. When you became eligible to receive your pension, it was calculated on this basis. Therefore, you are receiving everything to which you are entitled.

If you wish to make any comments on the above information, please do not hesitate to contact us.

We hope the above information will be of some assistance to you in the satisfactory resolution of your problem.

In the event of future correspondence with this Office, please be sure to quote our file reference number.

Yours very truly,



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-

Dear Sir:

This will confirm your interview with me at our Queen's Park Office on August 17, 1977. You and [the other complainant] raised three concerns in that interview, each arising out of your employment and subsequent departure from a smelting and refining company. Your original complaint concerned working conditions at this company. Specifically, you suggested that the fumes from vats of acid at the plant created a health hazard to the employees there. You registered a complaint with both the Ministry of Labour and the Ministry of Health, and expressed annoyance that neither Ministry has contacted you about pursuing the matter.

You indicated also that you left the employ of the smelting and refining company as a result of the hazards you perceived to your health. A subsequent dispute with the company over vacation pay and a wage supplement led to a complaint which you and [the other complainant] filed jointly with the Employment Standards Branch of the Ministry of Labour on or about June 10, 1977. At the time of the interview, you had received no word about the status of your complaint and you asked that we look into it.

Finally, you established a claim with the Wellington Street Office of the Unemployment Insurance Commission (UIC). Because UIC understood you to have quit without cause, however, you had not yet received any benefits. This matter was to be appealed and you asked us to determine the status of your claim.

A member of our staff has looked into these matters for you. Taking them in the same order as above, here are the results of these inquiries.

(1) The Occupational Health and Safety Division of the Ministry of Labour indicated that the complaint from you and [the other complainant] concerning the hazard caused by the fumes from the acid, was received on May 18, 1976. It was not until March 22, 1977 that investigators from the Ministry were sent to the plant.

We learned from the Ministry of Health that the Occupational Health and Safety Branch was in the process of being transferred from the Ministry to the Ministry of Labour during that period; that may account for the delay. Its investigation substantiated your complaint and the findings were duly reported to the company. A letter from the company

dated March 28, 1977 indicated that the defects had been corrected. An investigator returned to the plant on June 29, 1977, and found that minimum provincial standards for occupational health and safety were being met in all respects.

You were not notified of these investigations or their results because it is not normal Ministry policy to take the initiative in notifying individual complainants of the results of investigations of their complaints. General information about inspection results is not confidential, however, and you can pursue the matter if you wish by getting in touch with:

Mr. O'Reilly
Industrial Health and
Safety Branch
Occupational Health and
Safety Division
Ministry of Labour
400 University Avenue
14th Floor
Toronto, Ontario.

Telephone: (416) 965-4125

In the event that you find fault with the findings of the inspector, you may, according to section 11(1) of The Industrial Safety Act, appeal to the Director of the Industrial Safety Branch for a review of these results. Appeals must be in writing and must include reasons for questioning the inspector's report. Mr. O'Reilly can give you any other details you may require about the procedure. If the decision of the Director leaves you dissatisfied as well, you can if you wish bring the matter once again to the Ombudsman's attention for independent review. According to section 15(4)(a) of The Ombudsman Act, 1975, however, the Ombudsman cannot investigate any complaint until all other opportunities for appeal within the Ministry have been taken and completed or until the time within which they may be taken has expired.

(2) As I explained at the time of our interview, the length of time it has taken for the Employment Standards Branch to investigate your complaint is not unusual; in this instance, the investigation has been complicated by two things: (a) the necessity of performing a field audit, partly because you and [the other complainant] filed your complaint jointly and your entitlements differ; (b) the fact that the company moved at the beginning of August. The Board will proceed with the field audit as rapidly as it can; you can find out the status of the investigation at present by contacting the Regional Manager, Mr. Harold Goodwin, at 965-7931.

(3) We have spoken to the Special Inquiries office of the UIC about the status of your claim. You did not receive benefits for the eight-week period after your claim was established on June 26, 1977, because of the two-week waiting period which every claimant faces and an additional six-week disqualification because of the information UIC received that you had left your job voluntarily and without cause. We were advised that you appealed this disqualification and that appeal has now been heard. In any event, however, the disqualification period has expired and you are now eligible for benefits. A cheque for \$110, representing one week's benefits, should have been mailed to you earlier in the week. There is no reason to anticipate further problems with your entitlement.

If your appeal is accepted, you will receive a cheque from UIC for benefits denied you previously by the order of disqualification; if your appeal is denied, your continuing benefits will not be affected and there may be an opportunity for one further appeal. As I explained at the interview, the Ombudsman has no jurisdiction over the UIC which is a federal agency as the Ombudsman's authority is strictly provincial. If you require further assistance with UIC, you should perhaps obtain legal advice (you are entitled to legal representation at all UIC appeal proceedings). If you cannot afford a lawyer, you may be eligible for legal aid under the Ontario Legal Aid Plan; information about legal aid in York County can be obtained from:

Mr. W. Reid Donkin, Q.C.
204A Richmond Street West
Toronto, Ontario. M5V 2T7

Telephone: (416) 598-0200

There are, as well, a number of clinics throughout Metropolitan Toronto where free legal advice can be obtained. Two of those nearest to your home are:

People and Law
362 Bathurst Street
Toronto, Ontario

Telephone: (416) 362-7753

and

Students' Legal Aid Society
University of Toronto Law School
84 Queen's Park Crescent
Toronto, Ontario

Telephone: (416) 978-7293

We hope this information responds to your concerns and makes clear the extent to which we might be able to help you further with these matters. If you find it appropriate to contact us again, please do so without hesitation; for expediency, please cite the file reference number given at the beginning of this letter.

Yours very truly,



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-

Dear Sir:

This will acknowledge receipt of your letter dated March 18, 1977.

As we understand it, various local townships have set up their own systems of bounties on wolves. As wolf bounties from the provincial government have been discontinued you feel that the setting up of new ones by the municipalities or townships may be illegal. You feel that wolves have been abused by man for a very long time. You have contacted your M.P.P. to express your concern regarding this matter but he did not take any action. You have written to us in the hope that we will look into the matter for you.

We can well appreciate your concern with regard to this matter. We must point out, however, that your complaint is of a local nature, inasmuch as it is directed against the municipality and, as such, we regrettably do not have the jurisdiction to deal with it.

The function of the Ombudsman is "to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or body of persons in his or its personal capacity."

The phrase, governmental organization, means "a Ministry, commission, board or other administrative unit of the Government of Ontario, and includes any agency thereof."

As you know, the province provided bounties for wolves and bears under The Wolves and Bears Bounty Act, which was repealed in 1972. Now, however, municipal councils are interpreting The Municipal Act, R.S.O., 1970, c. 284, section 242, as their authority to pass bylaws providing for the payment of the bounty on wolves. This section reads as follows:

"Every Council may pass such bylaws and make such regulations for the health, safety, morality and welfare of the inhabitants of the municipality in matters not specifically provided for by this Act as may be deemed expedient and are not contrary to law and for governing the proceedings of the Council, the conduct of its members and the calling of meetings."

It seems that the position of the Council is that although the power to pass bylaws respecting wolf bounties is not specifically provided for by this Act, bylaws concerning wolf bounties relate to "health", "safety" and "welfare" of the inhabitants of the municipality.

There is a real question as to whether section 242 of The Municipal Act is sufficient authority for the municipalities to pass bylaws respecting wolf bounties. This being a legal question it is really a matter for the courts. Might we suggest that you consult a lawyer with a view to determining whether there are sufficient grounds for your bringing a court application to quash municipal bylaws providing for wolf bounties on the basis that the municipality is exceeding its authority under The Municipal Act in passing such a bylaw.

If you decide to pursue this matter and are unable to afford the services of a lawyer, you may be eligible for legal aid under the Ontario Legal Aid Plan. The person to contact in your area is:

Mr. J.C. McCubbin, Q.C.
347-8th Street East
Box 455
Owen Sound, Ontario

Telephone: 376-9130

While we regret that we cannot be of more assistance to you, we do hope the above information will be of some help to you in the satisfactory resolution of your problem.

In the event of any future correspondence with this Office, please be sure to include our file reference number.

Yours very truly,



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-

Dear Madam:

Thank you for bringing your concern to the attention of the Ombudsman. According to your letter of August 16, 1977, you were made a ward of the Children's Aid Society in London, Ontario in 1957 at the age of three; later in that year you were placed in the home of [a family]. Although you were never legally adopted, you remained with this family until maturity. For the past several years, you have been attempting to obtain information about your natural family; your complaint, in essence, is that you have been unable to obtain the information you want. You have come to the Office of the Ombudsman to see if we might be able to help make it available to you.

We have spoken to two officials in the Ministry of Community and Social Services about your situation: Miss Helen Allen, of the Adoption Service, and Mr. Ken Macdonald, who is Director of the Child Welfare Branch of that Ministry. They agreed that your request was different from most similar requests from adoptees about their natural families in that: (1) you were not legally adopted, and (2) you already possess a good deal of so-called identifying information about members of your natural family. The fact that you were not legally adopted may mean that certain statutory provisions which protect adoptive parents are inapplicable to your situation; the fact that you already possess the names of your natural parents and your brother and sister means that a good deal of the information you seek is already available to you. Birth, death and marriage certificates, for example, are all a part of the public record. The problem, of course, is to find the right ones; unfortunately, neither this Office nor the Child Welfare Branch has the staff or the research facilities which would be required to undertake such a study. However, Mr. Macdonald can advise you with considerable authority on all matters of right and entitlement pertaining to wards of the Children's Aid Society, and about the availability and accessibility of the other kinds of documentary information which concern you. He asked that we advise you to discuss your interest with him before proceeding on your own.

Your efforts to obtain information about your background and the circumstances of your placement with the Children's Aid Society are not difficult to understand; unfortunately, the Office of the Ombudsman is not at present empowered to assist you with them. The Ombudsman Act, 1975 grants to the Ombudsman the authority to investigate complaints

dealing with acts, decisions or omissions of ministries and administrative agencies of the Government of Ontario; in spite of the fact that local children's aid societies come under considerable provincial control, it has been determined after extensive research that they do not themselves fall within the jurisdiction of this Office. Policies and practices of children's aid societies are, however, supervised by the Child Welfare Branch of the Ministry of Community and Social Services; the appropriate person to contact is, once again, Mr. Macdonald. Address your concern to him as follows:

Mr. J.K. Macdonald
Director
Child Welfare Branch
Ministry of Community and
Social Services
7th Floor, Hepburn Block
Queen's Park
Toronto, Ontario
M7A 1E9

Activities of the Child Welfare Branch do come under the Ombudsman's jurisdiction. In the event that you are dissatisfied with Mr. Macdonald's efforts on your part in obtaining information from the Children's Aid Society, it is appropriate at that time for you to raise the matter with the Ombudsman again, if that is what you wish to do.

We hope this information will assist you in pursuing your concern; we regret that we cannot be of further help to you at this time. Please feel free to get in touch with this Office again with any matter which you believe deserves his attention. For expediency, please cite the file reference number given above in any future correspondence.

Yours very truly,



The Ombudsman | Ontario

SUITE 600

65 QUEEN STREET WEST, TORONTO, ONTARIO

M5H 2M5

TELEPHONE (416) 869-

Dear Sir:

This will acknowledge receipt of your letter dated March 18, 1977, together with enclosures.

As we understand it, you are a builder who builds one to four houses per year. You had a house for sale in 1976 and you cannot sell it now in 1977. You believe that the HUDAC New Home Warranty Program is barring you from selling that house. You were aware of the HUDAC voluntary program but not of the compulsory one. You question the contents of Bill C-94 and the power it holds over the free enterprise system. You feel HUDAC is an invasion of privacy and an overall detriment to Canada. In your letter to Mr. William Davis, Q.C., you outlined your concern regarding HUDAC and the HUDAC New Home Warranty Program.

We can well appreciate your concern with regard to this matter. We must point out, however, that because your complaint is not directed against a specific governmental organization, we regrettably do not have the jurisdiction to deal with it.

The Ombudsman Act empowers the Ombudsman "to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or body of persons in his or its personal capacity."

Governmental organization has been defined to mean "a Ministry, commission, board or other administrative unit of the Government of Ontario, and includes any agency thereof."

Although it is beyond the jurisdiction of our Office to investigate your complaint, a member of our staff did research the relevant legislation and spoke with Mr. Ralph Lewis of the Business Practices Division, Ministry of Consumer and Commercial Relations. In the course of this investigation, we discovered that there is a possible margin for confusion regarding HUDAC.

There are two associations that bear the HUDAC name. The first, referred to simply as HUDAC, is a non-profit trade association for residential construction. This association originated in 1943 as the National Home Builders Association. Over the years HUDAC has been instrumental in promoting legislative and regulatory changes which have improved the economic climate within the residential construction industry.

Membership in this organization is on a voluntary basis. HUDAC has been especially concerned with the development of a home owner warranty program. It went so far as to draft a new home owner warranty program.

The second organization that bears the HUDAC name is the HUDAC New Home Warranty Program. It too is a non-profit organization designated by the Province to administer the Ontario New Home Warranties Plan as set out in Provincial Bill C-94. This program is the responsibility of the Ministry of Consumer and Commercial Relations. Participation in this program is obligatory for any builder in Ontario who wishes to sell a new home. The Ontario New Home Warranties Plan was enacted January 1, 1977, and applies to the sale of any new house regardless of when the house was built. Any lawyer acting for a purchaser will ask for the Warranty.

The provisions of the HUDAC New Home Warranty Program are the same for both large and small builders. There is an initial registration fee of \$350 for the first year and a fee of \$50 per year thereafter. There is also an enrollment fee of \$85 per home. Mr. Lewis said that the reason for the delay in attaining HUDAC application forms was due to a huge back log of correspondence. The Ministry of Consumer and Commercial Relations is trying to process that correspondence as quickly as possible.

Mr. Lewis told us that the Bill was designed to protect the consumer. With this in mind, several advertising campaigns have been launched by the Government since the Bill was passed. Ads were placed in weekly and daily newspapers, in law reports and in building trade magazines.

If you have any further questions with regard to this matter we suggest that your contact:

Mr. Ralph Lewis
Business Practices Division
Ministry of Consumer and
Commercial Relations
5th Floor
555 Yonge Street
Toronto, Ontario

Telephone: (416) 965-6506

We hope that the above information has been of some assistance to you in helping to clear up the confusion that exists regarding HUDAC, and that it will help you in obtaining a satisfactory resolution to your problem.

The Ombudsman | Ontario

In the event of future correspondence with this Office, please be sure to quote our file reference number.

Yours very truly,



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-

Dear Madam:

This will acknowledge receipt of your letter dated June 11, 1977.

As we understand it, you do not feel that you were dealt with fairly by your employer with respect to your position as manageress at a store. You state that you were pushed out of your store so that someone else could have your position. You do not think that you received all the severance pay to which you were entitled. You apparently notified the Employment Standards Branch about your problem but you were not satisfied with the results obtain through that channel. You have thus written to this Office for assistance.

In an effort to determine the exact status of your complaint, a member of our staff contacted the Employment Standards Branch of the Ministry of Labour. We discussed your problem with Mr. Don Radford, the Acting Director of this Branch. He advised that he was aware of your problem and after discussion, he indicated to us that he assigned your file for re-investigation. He stated that he was not satisfied that your problem had been handled properly in the course of the first investigation and felt that this second review of your problem would clarify any inconsistencies that might exist.

If you have any further questions with regard to this matter, you might wish to contact Mr. Radford directly. His address is:

Mr. Don Radford
Acting Director
Employment Standards Branch
Ministry of Labour
6th Floor
400 University Avenue
Toronto, Ontario

Telephone: (416) 965-7931

We hope that you will find the above information satisfactory.

Should you still be dissatisfied with the results of the Branch's re-investigation of your problem, you may then contact us again and we will gladly review your file.

We are returning your documents. In all future correspondence please quote the above file reference number.

Yours very truly,

The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-

Dear Sir:

This letter will confirm your interview with Mr. Brian Reynolds of this Office on September 2, 1977. We understand your concern to involve the status of your mechanic's licence, which you have been given to understand is under review by the Ministry of Transportation and Communications. Your understanding is that this review may take an indefinite period of time and that its outcome cannot be appealed if it goes against you. You advised Mr. Reynolds as well that you are unemployed because of this review. You have come to the Ombudsman to ascertain what recourse is available to you.

A member of our staff has made a number of inquiries on your behalf; here is the situation. The expression "mechanic's licence" can refer to one of two things: a motor vehicle mechanic's licence, issued as the result of completing a certification procedure approved by the Ministry of Colleges and Universities, and registration as a motor vehicle inspection mechanic, which comes under the auspices of the Ministry of Transportation and Communications. According to the Ministry of Colleges and Universities, you have completed the required certification procedure for a motor vehicle mechanic and your licence to operate as such is not in jeopardy, nor is it subject to review. As long as you have a valid motor vehicle mechanic's licence you can obtain employment as a mechanic without penalty of any kind.

The problem seems to have been with your application for registration as a motor vehicle inspection mechanic. We understand from the Ministry of Transportation and Communications that after you left the employ of a car dealership, you were employed as a mechanic by a garage. This garage is licenced to provide motor vehicle safety inspections, and they followed the procedure specified in The Highway Traffic Act in applying on your behalf to the Ministry of Transportation and Communications to register you as a mechanic authorized to give safety inspections. It was at that point that you and your employer were advised by the Ministry that the application would be delayed pending an investigation. We understand that the Ministry had completed its investigation and sent a representative to your employer to notify you and the garage of their decision, as required by law. When the representative of the Ministry arrived at the garage, however, he was advised that you had left the employ of the garage voluntarily. Your resignation voided your application for

registration; as a consequence, the matter was dropped by the Ministry.

You are free to work as a motor vehicle mechanic any time and anywhere you can find employment. If you wish to work as a mechanic giving safety inspections to motor vehicles, however, it will be necessary for your employer at that time to apply for registration once again with the Ministry of Transportation and Communications. The Director of Vehicle Inspection Standards at that Ministry has the authority either to approve that application or to propose that it be rejected. If he proposes rejection of your application, he is required by law to advise both you and the licenced garage employing you of that fact in writing, and to give reasons for his decision. In that event certain appeal procedures would become available to you. For your information they are described below.

A proposal to refuse registration to a mechanic or a licence to a garage can be appealed to the Licence Suspension Appeal Board if an appeal is requested in writing within 15 days of this notification; copies of the request for appeal should be sent both to the Licence Suspension Appeal Board and to the Director of Vehicle Inspection Standards. The Director of Vehicle Inspection Standards is Mr. Alan Argue; his address and the address of the Licence Suspension Appeal Board are the same:

Ministry of Transportation
and Communications
East Building
1201 Wilson Avenue
Downsview, Ontario
M3M 1J8

Once an application for appeal has been received, the Licence Suspension Appeal Board schedules a hearing to consider the evidence relative to the case and to make a decision about it. Both the Director and the applicant can be represented by legal counsel at the hearing. On the basis of the findings of the hearing, the Board may order the Director to carry out his proposal to refuse registration, to refrain from carrying it out or to take other action it deems appropriate.

If the applicant is still dissatisfied after the Board has made its decision, a further appeal can be made to the Divisional Court within 15 days of notification of the Board's decision. Appeals entered after the 15 day period has expired can be entertained at the discretion of the Court. Alternatively, the 15 day period for appeal to the Divisional Court can be allowed to lapse and the matter can be brought instead to the attention of the Ombudsman for independent investigation. Two points are important about the Ombudsman's

jurisdiction: (1) Section 15(4)(a) of The Ombudsman Act, 1975 specifically denies to the Ombudsman the power to intervene in any matter within his jurisdiction until such times as all opportunities for appeal provided by law or regulation have been exhausted; (2) Section 14(a) of The Ombudsman Act, 1975 prohibits the Ombudsman from reviewing in any way the behaviour of judges or the decision or proceedings of courts. Briefly, then, an adverse decision by the Licence Suspension Appeal Board can be taken either to the Divisional Court or to the Ombudsman, but not both.

We hope this information provides you with sufficient context to understand your situation. There is little more at this time that the Ombudsman can do to assist you in this matter; if, however, it becomes appropriate at some future time to contact this Office again, please do so without hesitation. For the convenience of our staff, please use the file reference number given above in any correspondence with this Office.

Yours very truly,

3 1761 11547244 1

